

have the same effect as if the heir or devisee of such trustee had duly executed a conveyance of the property in the same manner for the same estate.

17. When any immoveable property is subject to a contingent right of unborn trustee. contingent right in an unborn person or class of unborn persons, who, upon coming into existence, would, in respect thereof, hold such property upon any trust, it shall be lawful for the High Court to make an order which shall wholly release and discharge such property from such contingent right in such unborn person or class of unborn persons, or to make an order which shall vest in any person or persons the estate or estates which such unborn person or class of unborn persons would, upon coming into existence, hold in such property.

18. In every case where any person holds or shall hold, jointly or solely, any immoveable property, or is or shall be entitled to a contingent right therein, upon any trust, and a demand shall have been made upon such trustee by a person entitled to require a conveyance of such property, or a duly-authorized agent of such last-mentioned person requiring such trustee to convey the same, or to release such contingent right, it shall be lawful for the High Court, if the said Court shall be satisfied that such trustee has wilfully refused or neglected to convey the said property for the space of twenty-eight days after such demand, to make an order vesting such property in such person or persons, in such manner, and for such estate as the Court shall direct, or releasing such contingent right in such manner as the Court shall direct; and the said order shall have the same effect as if the trustee had duly executed a conveyance of the property, or a release of such right, in the same manner and for the same estate.

19. When any person to whom any immoveable property has been conveyed by way of mortgage of mortgagee. shall have died without having entered into the possession, or into the receipt of the rents and profits, thereof, and the money due in respect of such mortgage shall have been paid to a person entitled to receive the same, or such last-mentioned person shall consent to an order for the re-conveyance or vesting of such property, then, in any of the following cases, it shall be lawful for the High Court to make an order vesting

2. Act No. XXIV. of 1867 (*to consolidate and amend the law relating to the office and duties of Administrator-General*) and Act No. XIX. of 1869 (*to facilitate administration to the estates of deceased British subjects in the Hyderabad Assigned Districts*) and Act No. V., of 1870 (so far as it relates to the Administrator-General) are hereby repealed.

All things duly done under any of the enactments hereby repealed shall be considered as having been done under this Act.

Interpretation-clause.

3. In this Act, unless there be something repugnant in the subject or context,—

"Presidency of Bengal"

"Presidency of Bengal" includes—

(a) the territories for the time being respectively under the governments of the Lieutenant-Governors of Bengal, the North-Western Provinces, and the Punjab;

(b) the territories for the time being respectively under the administration of the Chief Commissioners of Oudh, the Central Provinces, Burma,* Ajmere and Merwara, Assam, and the Andaman and Nicobar Islands;

(c) such of the dominions of Princes and States aforesaid as the Governor-General in Council may, by notification in the *Gazette of India*, from time to time direct:†

"Presidency of Madras"

"Presidency of Madras" includes—

(a) the territories for the time being under the government of the Governor of Fort St. George in Council,

The Act has been extended, under s 5 of the same Act, to the North-Western Provinces Tarai—See *Gazette of India*, 1876, Pt I, p 505.

The Act, as amended by Acts I of 1879, IX of 1881, and II of 1890, has been extended, under s 5 of the above Act, to the whole of Upper Burma (except the Shan States)—See Notification No 248, *Gazette of India*, 1890, Pt I, p 570

It has also been extended to the Shan States—See s 4 and the Schedule to the Shan States Laws and Criminal Justice Order, 1895

* "Burma" has been substituted for "British Burma" in s. 3 by the Indian Succession Law Amendment Act (II of 1890), s. 10

† For list of States notified under this clause, see *Gazette of India*, 1878, Pt. I, p 438, and *ibid*, 1890, Pt. I, p 247.

such trustee or trustees shall have been duly appointed by any power contained in any deed or instrument, or by the decree of the said Court, or by order made upon a petition to the said Court.

46. Where any minor or person of unsound mind shall be

entitled to any money payable in dis-
 Money of minors and per- charge of any immoveable property,
 sons of unsound mind to be paid into Court. stock, Government securities, or thing
 in action conveyed or transferred under this Act. it shall be lawful
 for the person by whom such money is payable to pay the same
 into the High Court in trust in any cause then depending con-
 cerning such money, or, if there shall be no such cause, to the
 credit of such minor or person of unsound mind subject to the
 order or disposition of the said Court ;

and it shall be lawful for the said Court, upon petition in a
 summary way, to order any money so paid to be invested in Go-
 vernment securities, and to order payment or distribution thereof,
 or payment of the dividends or interest thereof, as to the said Court
 shall seem reasonable

47. Where, in any suit commenced or to be commenced in

the High Court, it shall be made to
 Court may make decree in absence of trustee appear to the Court that diligent search
 and enquiry have been made, after any person made a defendant,
 who is only a trustee, to serve him with the process of the Court,
 and that he cannot be found, it shall be lawful for the said Court
 to hear and determine such cause, and to make such absolute
 decree therein against every person who shall appear to it to be
 only a trustee, and not otherwise concerned in interest in the
 matter in question, in such and the same manner as if such trustee
 had been duly served with the process of the Court, and had ap-
 peared at the hearing of such cause :

Provided always that no such decree shall bind, affect, or in

anywise prejudice, any person against
 Decree not effective with- whom the same shall be made, without
 out service of process. service of process upon him as aforesaid. his heirs, executors, or
 administrators for or in respect of any estate, right, or interest
 which such person shall have at the time of making such decree
 for his own use or benefit, or otherwise than as a trustee as afore-
 said.

"Officer" means a commissioned officer of Her Majesty's Army, or of Her Majesty's Indian Army:

"Soldier" means a soldier of Her Majesty's Army, or European soldier of Her Majesty's Indian Army, including a warrant and a non-commissioned officer:

"Assets" includes immoveable as well as moveable property.

PART II.

OF THE OFFICE OF ADMINISTRATOR-GENERAL.

Designation of the Administrators-General in the three Presidencies. 4. In each of the Presidencies of Bengal, Madras, and Bombay, there shall be an Administrator-General *

The said Administrators-General shall be called respectively the Administrator-General of Bengal, the Administrator-General of Madras, and the Administrator-General of Bombay.

Appointment, suspension, and removal of Administrators-General. 5. Such officers shall be appointed and may be suspended or removed by the authorities hereinafter mentioned, respectively, that is to say—

the Administrator-General of Bengal, by the Governor-General in Council,

the Administrator-General of Madras, by the Government of Fort St. George, and

the Administrator-General of Bombay, by the Government of Bombay.

6 Any person hereafter appointed to the office of Administrator-General or Officiating Administrator-General of any of the said Presidencies shall be a member of the Bar of England or Ireland, or of the Faculty of Advocates in

* For power to divide the Presidency of Bengal into Provinces, and to appoint an Administrator-General for each province, see s. 68, *infra*.

48. Every order to be made under this Act, which shall have the effect of a conveyance of any immoveable property, or a transfer of any such stock, Government securities, or thing in action, as can only be transferred by stamped deed, or for the transfer of which a stamp is necessary, shall be chargeable with the like amount of stamp-duty as it would have been chargeable with if it had been a deed executed, or a transfer made, by the person or persons holding such property, or entitled to such stock, Government securities, or thing in action.

Every such order shall be duly stamped for denoting the payment of the said duty.

49. The High Court may order the costs and expenses of, and relating to, the petitions, orders, directions, conveyances, and transfers to be made in pursuance of this Act, or any of them, to be paid and raised out of or from the immoveable or moveable property, or the rents or produce thereof, in respect of which the same respectively shall be made, or in such manner as the said Court shall think proper.

50. Upon any petition being presented under this Act to the High Court concerning a person of unsound mind, it shall be lawful for the said Court to make an order directing an enquiry whether such person is or is not of unsound mind and incapable of managing himself and his affairs.

Such orders shall have the same effect as the like order made under section 1 of Act XXXIV. of 1858 *(to regulate proceedings in lunacy in the Courts of Judicature established by Royal Charter)*, and the enquiry directed to be made shall be made in all respects in the manner declared and prescribed for making an enquiry under the last-mentioned Act.

The High Court may postpone making any order upon the petition presented as aforesaid until any enquiry so directed to be made shall have been finally concluded.

51. Upon any petition under this Act being presented to the High Court, it shall be lawful for the said Court to postpone making any

11. Unless the Governor-General in Council, or the Government with the sanction of the Governor-General in Council, otherwise orders, every Administrator-General hereafter to be appointed shall give security to the Secretary of State for India, for the due execution of his office, for one lakh of rupees by his own bond, and for another lakh of rupees, or for separate sums amounting together to one lakh of rupees, by the deposit of Government securities, or by the joint and several bond or bonds of two or more sureties to be approved by Government, or partly by such deposit and partly by such bond or bonds :

Provided that every Administrator-General may, with the consent of Government, substitute either of the said two last-mentioned kinds of security for another previously given for such last-mentioned lakh or any part of it :

and every Administrator-General may, with the consent of Government, and shall, from time to time when required by Government so to do, cause fresh sureties to be substituted for any of those previously bound, so far as the security relates to the due execution of his office for the time then to come.

12. No Administrator-General shall be required by any Court to enter into any administration-bond, or to give other security to the Court, on the grant of any letters of administration to him in virtue of his office.

No Administrator-General shall be required to verify, otherwise than by his signature, any petition presented by him under the provisions of this Act, and if the facts stated in any such petition are not within the Administrator-General's own personal knowledge, the petition may be subscribed and verified by any person competent to make the verification.

Whoever makes a statement in any such petition which is false, and which he either knows or believes to be false, or does not believe to be true, shall be deemed to have intentionally given false evidence in a stage of a judicial proceeding.

13. Whenever any person holding the office of Administrator-General obtains leave of absence, the Government may appoint some person to officiate as Administrator-General; and such person,

order upon such petition until the right of the petitioner shall have been declared in a suit duly instituted for that purpose.

52. Every order made or purporting to be made under this Act by the High Court shall be a complete indemnity to all persons whatsoever for any act done pursuant thereto; and it shall not be necessary for such persons to enquire concerning the propriety of such order, or whether the High Court has jurisdiction to make the same.

53. Any order made by the High Court under this Act shall have the same effect, and be executed in the same manner, as a decree.

Short title.

54. This Act may be cited as "The Indian Trustee Act, 1866."

55. [*Application of Act to Straits Settlements.*] Repealed by the Repealing Act (XVI. of 1874).

16. If any person, not being a "Native Christian,"* Hindu, Muhammadan, Parsi,† or Buddhist, or a person exempted under the Indian Succession Act, 1865,‡ section 332, from the operation of that Act, shall have died, whether within any of the said Presidencies or not, and whether before or after the passing of this Act, and shall have left assets exceeding, at the date of the death, or within one year thereafter, the value of one thousand rupees within any of the said Presidencies,

and if no person, to whom the Court would have jurisdiction to commit administration of such assets, has, within one month after his death, applied in such Presidency for probate of his will, or for any letters of administration of his estate,

the Administrator-General of the Presidency in which such assets are shall, within a reasonable time after he has had notice of the death of such person, and of his having left such assets as aforesaid, take such proceedings as may be necessary to obtain from the High Court at the Presidency-town letters of administration to the effects of such person, either generally, or with a will annexed, as the case may require.

Whenever the Administrator-General of the Presidency takes proceedings under this section, it shall be sufficient if the petition required by section 246 of the Indian Succession Act, 1865,§ states—

- (a) the time and place of the deceased's death, to the best of the petitioner's knowledge or belief;
- (b) that the deceased left some property within the Presidency as hereinbefore defined; and
- (c) the amount or value of assets which are likely to come into the petitioner's hands.

17. Whenever any person, whether a "Native Christian,"* Hindu, Muhammadan, Parsi,† or Buddhist or not, shall have died leaving assets within the local limits of

* These words have been inserted by Act VII of 1901, s. 4.

† The word "Parsi" in ss 16 and 17 has been inserted by the Administrator-General's Act (IX. of 1881), s. 2.

‡ Act X. of 1865.

the Court may authorize and enjoin the Administrator General to collect and take possession of such property, and to hold or deposit or invest the same according to the orders and directions of the Court, and, in default of any such orders or directions, according to the provisions of this Act, so far as the same are applicable to such property ;

and the Administrator-General shall be entitled to a commission of one *per centum* upon the amount of all moveable assets collected or received by him in pursuance of such order, and also to reimburse himself for all payments made by him in respect of the assets which a private administrator of such assets might lawfully have made ;

and, in case letters of administration of any such property are afterwards granted to the Administrator-General, the said commission of one *per centum* shall be deemed a part-payment of the commission payable to the Administrator-General under the letters of administration.

Any order of Court made under the provisions of this section shall entitle the Administrator-General to collect and to take possession of such property, and, if necessary, to maintain a suit for the recovery thereof.

Grant of probate to executor appearing in the course of proceedings taken by Administrator-General.

19. If, in the course of proceedings to obtain letters of administration under the provisions of section 16 or section 17,

any executor appointed by a will of the deceased appears according to the practice of the Court, and proves the will, and accepts the office of executor,

or if any person appears according to such practice, and makes out his claim to letters of administration as next-of-kin of the deceased, and gives such security as is required of him by law or by the practice of the Court,

the Court shall grant probate of the will or letters of administration accordingly, and shall award to the Administrator-General his costs of the proceedings so taken by him, to be paid out of the estate as part of the testamentary or intestate expenses thereof.

ACT XXVIII. OF 1866

(The Trustees' and Mortgagees' Powers Act, 1866).*

RECEIVED THE G.-G.'S ASSENT ON THE 24TH OCTOBER 1866.

An Act to give to Trustees, Mortgagees, and others, in cases to which English Law is applicable, certain Powers now commonly inserted in Settlements, Mortgages, and Wills, and to amend the Law of Property, and relieve Trustees.

WHEREAS it is expedient that, in cases to which English law is applicable, certain powers and provisions usually inserted in settlements, mortgages, wills, and other instruments, should be made incident to the estates of the persons interested, so as to dispense with the necessity of inserting the same in terms in every such instrument, and that in such cases trustees should be relieved; It is enacted as follows:—

* The Statement of Objects and Reasons of the Bill which was passed into law as Act XXVIII. of 1866 has not been published; for Proceedings in Council relating to the Bill, see *Gazette of India*, 1866, Supplement, pp. 416, 417, 494, and 531

Act XXVIII of 1866 has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following scheduled districts, namely:—

West Jalpaiguri, the Western Hills of Darjiling, the Darjiling Tarai, and the Damson Sub-division of the Darjiling District.—See *Gazette of India*, 1881, Pt I, p 74:

The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singbhum.—See *Gazette of India*, 1881, Pt. I, p. 504:

The scheduled portion of the Mirzapur District.—See *Gazette of India*, 1879 Pt I., p 383

Jaunsar Bawar.—See *Gazette of India*, 1879, Pt. I., p. 382:

The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, and Dera Ghazi Khan.—See *Gazette of India*, 1886, Pt. I., p. 48:

The District of Sylhet.—See *Gazette of India*, 1879, Pt. I, p. 631:

2,000—17-11-1909.

Act XXVIII., 1866.—I.

23A.* Probate or letters of administration granted by the

Effect of probate or letters granted to Administrator-General. High Court at Calcutta, Madras, or Bombay to the Administrator-General of the Presidency of Bengal, Madras, or Bombay, as the case may be, shall have effect over all the property and estate, moveable or immoveable, of the deceased throughout such Presidency,

and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors paying their debts, and all persons delivering up such property to such Administrator-General :

Provided that the High Court may direct, by its grant, that such probate or letters of administration shall have like effect throughout either or both of the other Presidencies.

Whenever a grant of probate or letters of administration is made by a High Court to the Administrator-General with such effect as last aforesaid, the Registrar of such Court shall send to each of the other two High Courts a certificate that such grant has been made, and such certificate shall be filed by the Court receiving the same.

24. If any letters of administration granted to the Administrator-General under the provisions of

After revocation, letters granted to Administrator-General to be deemed as to him to have been voidable only

this Act be revoked or recalled, the same shall, so far as regards the Administrator-General and all persons acting under his authority in pursuance thereof, be deemed to have been only void-

able, except as to any act done by any such Administrator-General or other person as aforesaid, after notice of a will or of any other fact which would render such letters void :

Provided that no notice of a will or of any other fact which would render any such letters void shall

Proviso. affect the Administrator-General or any person acting under his authority in pursuance of such letters, unless, within the period of one month from the time of giving such notice, proceedings be commenced to prove the will, or to cause the letters to be revoked, nor unless such proceedings be prosecuted without unreasonable delay.

† S. 23A has been inserted by the Administrator-General's Act (IX. of 1881), s. 3.

1. In the construction of this Act, unless there be something repugnant in the subject or context,—

“immoveable property” shall include land, any benefit to
 “Immoveable property.” arise out of land, and things attached to
 the earth, or permanently fastened to
 anything which is attached to the earth :

“mortgage” shall be taken to include every instrument by
 “Mortgage.” virtue whereof immoveable property is
 in any manner conveyed, pledged, or
 charged as security for the repayment of money or money's worth
 lent, and to be reconveyed or released on satisfaction of the debt :

“mortgagor” shall be taken to include every person by whom
 “Mortgagor.” any such conveyance, pledge, or charge
 as aforesaid shall be made :

“mortgagee” shall be taken to include every person to whom
 “Mortgagee” or in whose favour any such conveyance,
 pledge, or charge as aforesaid is made
 or transferred : and

“High Court” means any Court established or to be estab-
 “High Court.” lished under Statute 24 & 25 Vict., cap.
 104,* and includes the Chief Court of
 the Punjab “and the Chief Court of Lower Burma.”†

The rest of Assam (except the North Lushai Hills).—*See Gazette of India*, 1897, Pt. I, p. 299

It has been declared, by notification under s. 3 (b) of the same Act, not to be in force in the Scheduled District of Lahaul.—*See Gazette of India*, 1885, Pt. I, p. 301.

It has been extended, by notification under s. 5 of the last-mentioned Act, to the Scheduled Districts of Kumaon and Garhwal.—*See Gazette of India*, 1876, Pt. I, p. 606.

This Act is based on “the Law of Property Amendment Act, 1859” (Stat. 22 & 23 Vict., c. 35), and Stat. 23 & 24 Vict., c. 145. This Act has since been repealed by Stat. 44 & 45 Vict., c. 41, s. 71, and Stat. 45 & 46 Vict., c. 38, s. 64

* The “Indian High Courts Act, 1861”

† Certain words referring to the Straits Settlements, repealed by the Repealing Act (XVI. of 1874), have here been omitted ; and the words quoted have been added by Act VI. of 1900, s. 47.

or when the widow or next-of-kin has, within one month if resident within the Presidency, or within three months if resident beyond the Presidency, obtained from any such Court letters of administration to the estate and effects of the deceased,

then and in either of such cases the Administrator-General shall (without prejudice to the provisions contained in sections 17 and 18) not be entitled to receive or retain any commission out of any assets belonging to such estate, and situate within the jurisdiction of the Court by which probate or administration has been granted as last aforesaid.

28.* When the Administrator-General has given such notices as would have been given by the High Court in an administration-suit for Distribution of assets. creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets or any part thereof in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he had not notice at the time of such distribution; and no notice of any claim shall affect him unless proceedings to enforce such claim are commenced within one month after the giving of such notice, and prosecuted without unreasonable delay.

Nothing herein contained shall prejudice the right of any creditor or other claimant to follow the assets or any part thereof in the hands of the persons who may have received the same respectively.

Letters to be granted to Administrator-General by his name of office. **29.** All letters of administration granted to any Administrator-General in virtue of his office shall be granted to him by his name of office;

and all letters of administration heretofore granted to the Authority given by such Ecclesiastical Registrar or Administrator-General officially, or granted to any letters. Administrator-General in virtue of his office, shall authorize the Administrator-General for the time being of the same Presidency to act as administrator of the estate to which such letters relate.

* S 28 has been substituted for the original by the Administrator-General's Act (IX of 1881), s 4.

Powers of Trustees for Sale, &c., and Trustees of Renewable Leaseholds.

2* † In all cases where, by any will, deed, or other in-

Trustees empowered to sell may sell in lots, and either by public auction or private contract.

instrument of settlement, it is expressly declared that trustees or other persons therein named or indicated shall have a power of sale, either generally or in any particular event, over any immoveable property named or referred to in, or from time to time subject to the uses or trusts of, such will, deed, or other instrument, it shall be lawful for such trustees or other persons, whether such property be vested in them or not, to exercise such power of sale by selling such property, either together or in lots, and either by public auction or private contract, and either at one time or at several times.

3* ‡ It shall be lawful for the persons making any such sale

Sale may be made under special conditions, and trustees may buy in, &c.

to insert any such special or other stipulations, either as to title or evidence of title, or otherwise, in any conditions of sale or contract for sale as they shall think fit; and also to buy in the property or any part thereof at any sale by auction, and to rescind or vary any contract for sale, and to resell the property which shall be so bought in, or as to which the contract shall be so rescinded, without being responsible for any loss which may be occasioned thereby;

and no purchaser under any such sale shall be bound to enquire whether the persons making the same may or may not have in contemplation any particular re-investment of the purchase money in the purchase of any other property or otherwise.

4.*§ For the purpose of completing any such sale as afore-

Trustees exercising power of sale, &c., empowered to convey.

said, the persons empowered to sell as aforesaid shall have full power to convey or otherwise dispose of the property in question in such manner as may be necessary.

* Ss. 2 to 5 and 32 to 37 shall be repealed in the territories to which the Indian Trusts Act (II of 1832) for the time being extends or is extended—See s. 2 of that Act.

† Compare Stat. 23 & 24 Vict., c. 145, s. 1.

‡ Compare *ibid*, s. 2.

§ Compare Stat. 23 & 24 Vict., c. 145 [which is now repealed by the Conveyancing and Law of Property Act, 1881 (Stat. 44 & 45 Vict., c. 41), and Settled Land Act, 1882 (Stat. 45 & 46 Vict., c. 38)], s. 3.

appointment. And, for the purposes of Act No. XVII. of 1864, such assets shall be deemed to have been vested in the Official Trustee under section 10 of that Act.

33. All estates, effects, and interests which, at the time of the death, resignation, or removal from office of any Administrator-General, are vested in him by virtue of such letters of Vesting of estates, &c., in successor of Administrator-General. administration, probates, or transfers as aforesaid, shall, upon every such death, resignation, or removal, cease to be vested in him, and shall vest in his successor in office immediately upon his appointment thereto.

All books, papers, and documents kept by such Administrator-General by virtue of his office, or as such executor or transferee as aforesaid, shall be transferred to, and vested in, his successor in office.

(b) Suits by and against the Administrator-General.

34. All suits and other proceedings commenced by or against any Administrator-General in his representative character may be brought by or against him by his name of office ;

and no suit or other proceeding heretofore or hereafter commenced by or against any person as Administrator-General, either alone or jointly with any other person, shall abate by reason of the death, resignation, or removal from office of any such Administrator-General; but the same may, by order of the Court, and upon such terms as to the service of notices or otherwise as the Court may direct, be continued by or against his successor immediately upon his appointment in the same manner as if no such death, resignation, or removal had occurred :

Provided that nothing hereinbefore contained shall render any such successor personally liable for any costs incurred prior to the order for continuing the suit against him.

Proviso as to costs.

35. If any suit be brought by a creditor against any Administrator-General in his representative character, the plaintiff shall be liable to pay the costs of the suit down to and including the decree unless,

5.*† The money so received upon any such sale as aforesaid shall be laid out in the manner indicated in that behalf in the will, deed, or instrument containing the power of sale ;

and, until the money to be received upon any sale as aforesaid shall be so disposed of, the same shall be invested at interest in Government securities for the benefit of such persons as would be entitled to the benefit of the money, and the interest and profits thereof, in case such money were then actually laid out as aforesaid :

Until so laid out, money said shall be so disposed of, the same shall be invested at interest in Government securities for the benefit of such persons as would be entitled to the benefit of the money, and the interest and profits thereof, in case such money were then actually laid out as aforesaid :

Provided that, if the will, deed, or instrument shall contain no such indication, the persons empowered to sell as aforesaid shall invest the money so received upon any such sale in their names upon Government securities in India, and the interest of such securities shall be paid and applied to such person or persons for such purposes and in such manner as the rents and profits of the property sold as aforesaid would have been payable or applicable in case such sale had not been made.

Powers of Mortgagees.‡

6.§ Where any principal money is secured or charged by deed on any immoveable property, or on any interest therein, the person to whom such money shall for the time being be payable, his executors, administrators, and assigns shall, at any time after the expiration of one year from the time when such principal money shall have become payable, according to the terms of the deed, or after any interest on such principal money shall have been in arrear for six months, or after any omission to pay any premium on any insurance which, by the terms of the deed, ought to be paid by the person entitled to the property subject to the charge, have the following powers to the same extent (but no more) as if they had been in terms conferred by the person creating the charge, namely :—

* See foot-note (*) on last preceding page.

† Compare *ibid.*, s 4

‡ As to the application of ss. 6 to 19 to certain English mortgages, see the Transfer of Property Act (IV. of 1882), s. 69, as amended by Act III. of 1885, s. 5.

§ Compare Stat. 23 & 24 Vict., c. 145, s. 11.

37. If, in cases falling within section 36, no person claiming Grant of certificate to otherwise than as a creditor to be entitled to a share of the effects of the deceased obtains, within three months, a certificate from the Administrator-General under the same section, or letters of administration to the estate and effects of the deceased, and such deceased was not a "Native Christian,"* Hindu, Muhammadan, Parsi, or Buddhist, or exempted under the Indian Succession Act, 1865,† section 33‡, from the operation of that Act, the Administrator-General may administer the estate and effects without letters of administration, in the same manner as if such letters had been granted to him, ‡

and, if he neglect or refuse to take upon himself the administration of the estate and effects, he shall, upon the application of a creditor, and upon being satisfied of his title, grant a certificate in the same manner as if such creditor were entitled to a share of the effects of the deceased ;

and such certificate shall have the same effect as a certificate granted under the provisions of the same section, and shall be subject to all the provisions of this Act which are applicable to such certificate :

Provided that the Administrator-General may, before granting such certificate, if he think fit, require the creditor to give reasonable security for the due administration of the estate and effects of the deceased.

38. The Administrator-General shall not be bound to grant any "certificate under section 36 or 37,"§ unless he be satisfied of the title of the claimant, and of the value of the assets of the deceased, either by the oath or affirmation of the claimant,|| or by such other evidence as he requires.

* These words have been inserted by Act VII of 1901, s 4

† Act X. of 1865

‡ This first paragraph of s 37 has been substituted for the original paragraph by the Indian Succession Law Amendment Act (II. of 1890), s. 11 (1)

§ In s 38, the words quoted have been substituted for the words, "any such certificate," by the Administrator-General's Act (IX of 1881), s 6

|| In s. 38, the words, "(which oath or affirmation the Administrator-General is hereby authorized to administer or take)," repealed by the Administrator-General's Act (IX of 1881), s 6, have here been omitted.

1st, a power to sell, or concur with any other person in selling, the whole or any part of the property by public auction or private contract, subject to any reasonable conditions he may think fit to make, and to rescind or vary contracts for sale, or buy in and resell the property, from time to time, in like manner ;

2nd, a power to appoint, or obtain the appointment of, a receiver of the rents and profits of the whole or any part of the property in manner hereinafter mentioned.

7.* Receipts for purchase-money given by the person or persons exercising the power of sale here-money sufficient discharges by conferred shall be sufficient discharges to the purchasers, who shall not be bound to see to the application of such purchase-money.

8† No such sale as last aforesaid shall be made until after Notice to be given before six months' notice in writing given to sale ; the person or one of the persons entitled to the property subject to the charge or affixed on some conspicuous part of such property ;

but, when a sale has been effected in professed exercise of the but purchaser relieved powers hereby conferred, the title of from inquiry as to circum- the purchaser shall not be liable to be stances of sale. impeached on the ground that no case had arisen to authorize the exercise of such power, or that no such notice as aforesaid had been given ; but any person damnified by any such unauthorized exercise of such power shall have his remedy in damages against the person or persons selling.

9‡ The money arising by any sale effected as aforesaid shall Application of purchase- be applied by the person receiving the money. same as follows :—

first, in payment of all the expenses incident to the sale or incurred in any attempted sale ;

secondly, in discharge of all interest and costs then due in respect of the charge in consequence whereof the sale was made ; and,

thirdly, in discharge of all the principal moneys then due in respect of such charge ;

* Compare Stat. 23 & 24 Vict., c. 145, s. 12.

† Compare *ibid*, s. 13.

‡ Compare *ibid*, s. 14.

to assets in British India have been taken under section 36 or section 37, and there has been a grant of administration in the country of domicile with respect to the assets in that country,

the holder of the certificate granted under section 36 or section 37, or the Administrator-General, as the case may be, after having given such notices as the High Court may by any general rule to be made from time to time prescribe, for creditors and others to send in to him their claims against the estate of the deceased, and, after having discharged, at the expiration of the time therein named, such lawful claims as he knows of, may, instead of himself distributing any surplus or residue of the deceased's property to persons residing out of British India who are entitled thereto, transfer, with the consent of the executor or administrator, as the case may be, in the country of domicile, the surplus or residue to him for distribution to those persons.

(d) Expenses of the Administrator-General's Establishment.

42 The Administrator-General shall defray all the expenses of the establishment necessary for his office, and all other charges to which the said office is subject, except those for which express provision is made by this Act.

(e) Accounts and Schedules.

43 The Administrator-General of each of the said Presidencies shall enter into books, to be kept by him for that purpose, separate and distinct accounts of each estate, and of all such sums of money, bonds, and other securities for money, goods, effects, and things as come to his hands, or to the hands of any person employed by him or in trust for him under this Act, and likewise of all payments made by him on account of such estate, and of all debts due by or to the same, specifying the dates of such receipts and payments respectively.

Such books shall be kept in the Administrator-General's office, and shall be open for the inspection of all such persons, practitioners in the said Courts, and others, as may have occasion to inspect the same, at office-hours, paying only such

and the residue of such money shall be paid to the person entitled to the property subject to the charge, his executors, administrators, or assigns, as the case may be.

10.* The person exercising the power of sale hereby conferred shall have power by deed to convey or assign to, and vest in, the purchaser the property sold, for all the estate and interest therein which the person who created the charge had power to dispose of:

Provided that nothing herein contained shall be construed to authorize the mortgagee of a term of years to sell and convey the fee-simple of the property comprised therein in cases where the mortgagor could have disposed of such fee-simple at the date of the mortgage.

11.† At any time after the power of sale hereby conferred shall have become exerciseable, the Owner of charge may call for title-deeds and conveyance of legal estate. person entitled to exercise the same shall be entitled to demand and recover, from the person entitled to the property subject to the charge, all the deeds and documents in his possession or power relating to the same property, or to the title thereto, which he would have been entitled to demand and recover if the same property had been conveyed, appointed, or surrendered to, and were then vested in him for all the estate and interest which the person creating the charge had power to dispose of;

and where the legal estate shall be outstanding in a trustee, the person entitled to a charge created by a person equitably entitled, or any purchaser from such person, shall be entitled to call for a conveyance of the legal estate to the same extent as the person creating the charge could have called for such a conveyance if the charge had not been made.

12.‡ Any person entitled to appoint, or obtain the appointment of, a receiver as aforesaid, may from time to time, if any person or persons has or have been named in the deed of charge for that purpose, appoint such person or any one of such persons to be receiver, or if no person be so named, then may, by writing delivered to the person or any one of the persons entitled to the property

* Compare Stat. 23 & 24 Vict., c. 145, s. 15.

† Compare *ibid*, s. 16.

‡ Compare *ibid*, s. 17.

dules are open to inspection there, or make such other orders respecting the same as he thinks fit.

PART IV.

OF THE AUDIT OF THE ADMINISTRATOR-GENERAL'S ACCOUNTS.

45 The Government shall from time to time appoint auditors to examine the accounts of the Administrator-General at the times of the delivery of the said schedules, and also at any other time when the Government thinks fit.

46 The auditors shall examine the schedules and accounts, and report to the Government—

- (a) whether they contain a full and true account of everything which ought to be inserted therein,
- (b) whether the books, which by this Act, or by any such general rules and orders as hereinafter mentioned, are directed to be kept by the Administrator-General, have been duly and regularly kept, and
- (c) whether the assets and securities have been duly kept and invested and deposited in the manner prescribed by this Act, or by any such rules and orders to be made as aforesaid.

47. Every auditor shall have power to summon as well the Administrator-General as any other witnesses, and to call for person whose presence he thinks necessary, to attend him from time to time, and to examine the Administrator-General or other person if he thinks fit, on oath or affirmation to be by him administered; and to call for all books, papers, vouchers, and documents which appear to him to be necessary for the purposes of the said reference.

If the Administrator-General or other person, when summoned, refuses or, without reasonable cause, neglects to attend, or to produce any book, paper, voucher, or document so required, or attends and refuses to be sworn or make an affirmation, or refuses to be examined, the auditors shall certify such neglect or refusal in writing to the High Court at the Presidency-town;

further part (as the case may be) of the estate of the deceased to meet any future liability under the said lease or agreement for a lease

The executor or administrator so distributing the residuary estate shall not, after having assigned the said lease or agreement for a lease, and having, where necessary, set apart such sufficient fund as aforesaid be personally liable in respect of any subsequent claim under the said lease or agreement for a lease.

Nothing herein contained shall prejudice the right of the lessor or those claiming under him to follow the assets of the deceased into the hands of the person or persons to or amongst whom the said assets may have been distributed.

41.* In like manner, where a testator or administrator, liable

As to liability of executor, &c, in respect of rents, &c, in conveyance on rent-charge as such to the rent, covenants, or agreements contained in any conveyance on chief rent or rent-charge (whether any such rent be by limitation of use, grant, or reservation). or agreement for such conveyance, granted or assigned to, or made and entered into with, the testator or intestate whose estate is being administered, shall have satisfied all such liabilities under the said conveyance or agreement for a conveyance as may have accrued due and been claimed up to the time of the conveyance hereinafter mentioned, and shall have set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the grantee to be laid out on the property conveyed, or agreed to be conveyed, although the period for laying out the same may not have arrived, and shall have conveyed such property, or assigned the said agreement for such conveyance as aforesaid, to a purchaser thereof, he shall be at liberty to distribute the residuary estate of the deceased to and amongst the parties entitled thereto, respectively, without appropriating any part or any further part (as the case may be) of such estate to meet any future liability under the said conveyance or agreement for a conveyance.

The executor or administrator so distributing the residuary estate shall not, after having made or executed such conveyance or assignment, and having, where necessary, set apart such sufficient fund as aforesaid, be personally liable in respect of any subsequent claim under the said conveyance or agreement for conveyance.

* Compare Stat 22 & 23 Vict., c 35, s 28

The Court shall have power upon any such petition to compel the attendance in Court of the defendant and any witnesses who may be thought necessary, and to examine them orally or otherwise as the said Court thinks fit, and to make and enforce such order or orders as the Court thinks just.

51. The costs, including those of the Advocate-General and Costs of reference, &c., of the reference to him, if the same be how to be defrayed. directed by the Court to be paid, shall be defrayed either by the defendant or out of the estates rateably as the said Court directs; and, whenever any costs are recovered from the defendant, the same shall be repaid to the estates by which they have been in the first instance contributed; and the Court may, if it think fit, order the defendant to receive his costs out of the said estates.

PART V.

OF THE COMMISSION OF THE ADMINISTRATOR-GENERAL.

52. The Administrator-General of each of the said Presidencies, under any letters of administration granted to him in his official character, or under any probate granted to him of a will wherein he is named as executor by virtue of his office, or under any probates or letters of administration vested in him by section 8 or section 31, shall be entitled to receive a commission at the following rates respectively, namely:—

The Administrator-General of Bengal at the rate of three *per centum*, and the Administrators-General of Madras and Bombay respectively at the rate of five *per centum*, upon the amount or value of the assets which they respectively collect and distribute in due course of administration.

53 The last-preceding section shall not apply to cases in which the property of an officer or soldier dying on service comes to the hands of the Administrator-General of any of the said Presidencies under the 9th or the 12th section of the Statute called the Regimental Debts Act, 1863;*

* Stat 26 & 27 Vict, c. 57.

Nothing herein contained shall prejudice the right of the grantor or those claiming under him to follow the assets of the deceased into the hands of the person or persons to or among whom the said assets may have been distributed.

42.* Where an executor or administrator shall have given such or the like notices as in the opinion of the Court in which such executor or administrator is sought to be charged would have been given by the High Court in an administration-suit, for creditors and others to send in to the executor or administrator their claims against the estate of the testator or intestate, such executor or administrator shall, at the expiration of the time named in the said notices or the last of the said notices for sending in such claims, be at liberty to distribute the assets of the testator or intestate, or any part thereof, amongst the parties entitled thereto, having regard to the claims of which such executor or administrator has then notice, and shall not be liable for the assets or any part thereof so distributed to any person of whose claim such executor or administrator shall not have had notice at the time of distribution of the said assets or a part thereof, as the case may be.

Nothing in the present Act contained shall prejudice the right of any creditor or claimant to follow the assets or any part thereof into the hands of the person or persons who may have received the same respectively.

43.† Any *trustee*, executor, or administrator shall be at liberty, without the institution of a suit, to apply by petition to any Judge of the High Court for the opinion, advice, or direction of such Judge on any question respecting the *management or administration of the trust-property or the assets of any testator or intestate.*

Such application shall be served upon, or the hearing thereof shall be attended by, all persons interested in such application, or such of them as the said Judge shall think expedient.

* Compare Stat. 22 & 23 Vict., c. 35, s. 29.

† Compare Stat. 22 and 23 Vict., c. 35, s. 30, the italicized words in s. 43, wherever they occur, being deemed to have been repealed in the territories to which the Indian Trusts Act (II. of 1832) extends for the time being or is extended.—See s. 2 of that Act.

centum upon the amount or value of the assets which he collects and distributes in due course of administration, and again to be reduced.

The Governments of the Presidencies of Fort St. George and Bombay respectively may, with the sanction of the Governor-General in Council, from time to time order the aforesaid rate of commission hereby authorized to be received by the Administrators-General of Madras and Bombay respectively to be reduced, and again to be raised :

Provided that the commission so to be received shall not at any time exceed five *per centum* of the assets collected, and that no person now holding the office of Administrator-General of Bengal, Madras, or Bombay shall, by any such order, be deprived of the right to receive and retain, for his own use, a commission at the rate of three *per centum* in respect of all assets collected and actually administered by him.

55A * Notwithstanding anything hereinbefore contained, an Administrator-General of a Presidency obtaining probate or letters of administration operating in another Presidency shall be entitled to the same rate of commission in respect of the collection and distribution of assets collected in such Presidency as the Administrator-General of such Presidency would have been entitled to if such assets had been collected and distributed by him, and to no higher rate.

56. [Repealed by Act V. of 1902, s. 4]

PART VI.

MISCELLANEOUS.

57. The Government may, from time to time, make rules†
Power to make rules— consistent with the provisions of this Act—

* S 55A has been inserted by the Administrator-General's Act (IX. of 1881), s. 7.

† For rules made under this section—

(a) for the Presidency of Bengal, *see Calcutta Gazette*, 1856, p. 544.

These rules are kept in force by the proviso to this section ;

(b) by the Government of Bombay, *see* the Bombay List of Local Rules and Orders, Vol I., Ed 1896, pp 102 and 108,

(c) by the Government of Madras, *see* notification quoted on p 26 of the Madras List of Local Rules and Orders, Vol I, Ed. 1898, p. 26, and *Fort St. George Gazette*, 1898, Pt. I., p 702.

The *trustee*, executor, or administrator acting upon the opinion, advice, or direction given by the said Judge, shall be deemed, so far as regards his own responsibility, to have discharged his duty as such *trustee*, executor, or administrator in the subject-matter of the said application :

Provided, nevertheless, that this Act shall not extend to indemnify any *trustee*, executor, or administrator, in respect of any act done in accordance with such opinion, advice, or direction as aforesaid, if such *trustee*, executor, or administrator shall have been guilty of any fraud or wilful concealment or misrepresentation in obtaining such opinion, advice, or direction; and the costs of such application as aforesaid shall be in the discretion of the Judge to whom the said application shall be made.

General Provisions.

44.* For the purposes of this Act, a person shall be deemed
 Tenants for life, &c, to be entitled to the possession, or to
 may execute powers not- the receipt of the rents and income, of
 withstanding incumbrances. immoveable or moveable property, al-
 though his estate may be charged or incumbered, either by himself,
 or by any former owner, or otherwise howsoever to any extent ;
 but the estates or interests of the parties entitled to any such charge
 or incumbrance shall not be affected by the acts of the person
 entitled to the possession or to the receipt of the rents and income
 as aforesaid unless they shall concur therein.

45.† The provisions contained in this Act shall, except as
 hereinbefore otherwise provided, extend
 only to persons entitled or acting under
 a deed, will, codicil, or other instrument executed after this Act
 comes into operation, or under a will or codicil confirmed or
 revived by a codicil executed after that date, and only to property
 in British India, and to cases to which English law is applicable.

Short title.

46. This Act may be called the
 "Trustees' and Mortgagees' Powers Act,
 1866."

* Compare Stat. 22 & 23 Vict., c. 35, s. 31

† Compare Stat. 23 & 24 Vict., c. 145, s. 34.

60. Any order made under this Act by any Court shall have the same effect, and be executed in the same manner, as a decree.

60A.* The Administrator-General may, whenever he desires, Power to examine on for the purposes of this Act, to satisfy oath. himself regarding any question of fact, examine, upon oath or affirmation (which he is hereby authorized to administer or take), any person who is willing to be so examined by him regarding such question.

61. Whoever, having been sworn or having taken an affirmation under this Act, makes, upon any False evidence. examination authorized by this Act, a statement which is false, and which he either knows or believes to be false, or does not believe to be true, shall be deemed to have intentionally given false evidence in a stage of a judicial proceeding.

62. All assets in the official charge of the Administrator-General of any of the said Presidencies, Assets unclaimed for fifteen years to be transferred to Government. and appearing from the official books and accounts of the Ecclesiastical Registrar, and of the Administrator-General of any of those Presidencies, or from the official books and accounts of any of those officers, to have been in official custody for a period of fifteen years or upwards without any claim thereto having been made and allowed, shall be transferred and paid to the Comptroller-General of Accounts, or to the Accountant-General to the Government of Fort St. George or Bombay, as the case may be, and be carried to the account and credit of the Government of India for the general purposes of Government;

and the receipt of the said Comptroller-General or Accountant-General, as the case may be, shall be a full indemnity and discharge to the said Administrator-General for any such transfer or payment:

Provided that this Act shall not authorize the transfer or Proviso. payment of any such proceeds as aforesaid pending any suit heretofore or hereafter instituted in respect thereof.

* S 60A has been inserted by the Administrator-General's Act (IX. of 1881), s. 8

- (c) whether or not any one has applied for probate of the will of the deceased or letters of administration to his effects.

The District Judge shall retain the property under his charge, or appoint an officer under the provisions of the Indian Succession Act, 1865,* section 239, to take and keep possession of the same until the Administrator-General has obtained letters of administration, or until some other person has obtained such letters or a certificate from the Administrator-General under the provisions of this Act, when the property shall be delivered over to the person obtaining such letters of administration or certificate, or, in the event of a will being discovered, to the person who may obtain probate of the will.

* The District Judge may cause to be paid out of any property of which he or such officer has charge, or out of the proceeds of such property or of any part thereof, such sums as may appear to him to be necessary for all or any of the following purposes, namely:—

- (a) The payment of the expenses of the funeral of the deceased, and of obtaining probate of his will or letters of administration to his estate and effects;
- (b) the payment of wages due for services rendered to the deceased, within three months next preceding his death by any labourer, artisan, or domestic servant; and
- (c) the relief of the immediate necessities of the family of the deceased;

and nothing in section 279, section 280, or section 281 of the Indian Succession Act, 1865,* or in any other law for the time being in force with respect to rights of priority of creditors of deceased persons, shall be held to affect the validity of any payment so caused to be made."†

65. Nothing in this Act is intended to require the Administrator-General to take proceedings to

Act not to require administration of estates of soldiers unless Administrator-General authorized by Military Secretary or Committee of Adjustment.

to obtain letters of administration to the estate or effects of any officer or soldier, or other person subject to any Articles of War, unless when the Administrator-General is duly authorized or required

* Act X. of 1865.

† In s. 64, the paragraph quoted has been added by the Indian Succession Law Amendment Act (II. of 1890), s. 13.

THE INDIAN TRUSTS ACT

(Act II. of 1882).

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PART VII.*

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68. (r) Notwithstanding anything in the foregoing provisions of this Act, the Governor-General in Council, upon the occurrence of any vacancy in the office of the Administrator-General of Bengal, may, by notification in the *Gazette of India*,—

(a) divide the Presidency of Bengal, as defined in this Act, into so many Provinces as he thinks fit,

(b) define the limits of each of those Provinces, and

(c) appoint an Administrator-General for each Province, and, subject to the provisions of this section, the following consequences shall thereupon ensue, namely:—

(i) The office of Administrator-General of Bengal shall cease to exist:

(ii) the Administrator-General of a Province shall have the like rights and privileges, and perform the like duties, in the territories and dominions included in the Province, as the Administrator-General of Bengal had and performed as Administrator-General therein:

(iii) the functions of the Government under this Act shall, as regards the territories and dominions included in a Province, be discharged by the Governor-General in Council:

(iv) the functions of whatsoever kind assigned by the foregoing provisions of this Act to the High Court at Calcutta in respect of the territories and dominions included in a Province shall be discharged by such High Court as the Governor-General in Council may, by notification in the *Gazette of India*, appoint in this behalf, and probate or letters of administration granted to the Administrator-General of the Province by the High Court so appointed shall have the same effect throughout the Presidency of Bengal as defined in this Act, or, if the Court so directs,

* Pt. VII. was added by the Indian Succession Law Amendment Act (II. of 1890), s. 15.

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* Stat. 26 & 27 Vict., c. 57.

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allowances, and on such terms and subject to such conditions, as the Governor-General in Council may direct; and, where he is so remunerated, he shall be entitled to no further remuneration whatsoever, but shall transfer and pay to such officer, in such manner, and at such times, as the Governor-General in Council may, by general or special order, require, all moneys payable to and received by him as Administrator-General, or, if he is also Official Trustee, as Official Trustee, by way of commission or other remuneration for his service, and the same shall be carried to the account and credit of the Government for the general purposes of the Government; and in such case all the expenses of the establishment necessary for the office of the Administrator-General, and, if he is also Official Trustee, for that of Official Trustee, including the provision of office-accommodation, together with all other charges to which the said office or offices may be subject, shall be defrayed by the Government.

(a) Nothing in this Act shall be deemed to render the Government or the Administrator-General appointed after the commencement of this Act liable for anything done or purporting to be done by or under the authority of the Administrator-General before the commencement of this Act, or, where the Administrator-General is also Official Trustee, for anything done or purporting to be done by or under the authority of any Official Trustee appointed before the appointment of the Administrator-General to be Official Trustee.

(g) The Government shall be deemed to be responsible for the civil liabilities of any Administrator-General remunerated by such fixed salary and allowances as aforesaid as Administrator-General or, if he is also Official Trustee, as Official Trustee.

(4) Notwithstanding anything in the Code of Civil Procedure,* a suit to enforce any such civil liability as aforesaid shall be brought against the Administrator-General as Administrator-General or, if he is also Official Trustee, as Official Trustee, as the case may be, by his name of office; and no suit so brought shall abate by reason of the death, resignation, suspension, or removal of the person holding the office of Administrator-General or Official Trustee.

* This evident reference to Act XIV. of 1882 (the Code in force at the time) should now be meant to apply to Act V. of 1908 (the Code of Civil Procedure now in force) or to its corresponding portion or provision.—See s. 158 of the latter Act

THE INDIAN TRUSTS ACT

(Act No. II. of 1882).

RECEIVED THE G.-G.'S ASSENT ON THE 13TH JANUARY 1882.

An Act to define and amend the Law relating to Private Trusts and Trustees.

WHEREAS it is expedient to define and amend the law relating to private trusts and trustees; It is hereby enacted as follows:—

Preamble.

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The Indian Trusts Act, 1882:" and it shall come into force on the first day of March, 1882.

Short title.
Commencement.

It extends, in the first instance, to the territories respectively administered by the Governor of Madras in Council, the Lieutenant-Governors of the North-Western Provinces and the Panjab, the Chief Commissioners of Oudh, the Central Provinces, Coorg, and Assam; and the Local Government may, from time to time, by notification in the official Gazette, extend it to any other part of British India. But nothing herein contained affects the rules of Muhammadan Law as to *waqf*, or the mutual relations of the members of an undivided family as determined by any customary or personal law, or applies to public or private religious or charitable endowments, or to trusts to distribute prizes taken in war among the captors; and nothing in the second chapter of this Act applies to trusts created before the said day.

Local extent.
Savings.

2. The Statute and Acts mentioned in the schedule hereto annexed shall, to the extent mentioned in the said schedule, be repealed in the territories to which this Act for the time being extends.

Repeal of enactments.

- (a) on such acts as may be necessary for the proper care and management of any property belonging to any estate or trust administered by him ; and,
- (b) with the sanction of the High Court at the Presidency-town in the case of the Administrator-General, or with that of the High Court of the Province in the case of a private executor or administrator, on such religious, charitable, and other objects, and on such improvements, as may be reasonable and proper in the case of such property.

8. Notwithstanding anything in the Administrator-General's Act, 1874,* or in any other enactment or rule of law for the time being in force, the Governor-General in Council may, by general or special order, direct that, where a subject of a Foreign State

dies in British India, and it appears that there is no one in British India, other than the Administrator-General, entitled to apply to a Court of competent jurisdiction for letters of administration of the estate of the deceased, letters of administration shall, on the application to such Court of any consular officer of such Foreign State, be granted to such consular officer on such terms and conditions as the Court may, subject to any rules made in this behalf by the Governor-General in Council by notification in the *Gazette of India*, think fit to impose.

9. In section 256 of the Indian Succession Act, 1865,† as amended by section 6 of the Probate and Administration Act, 1889 ‡ after the word "administration," the words and figures, "other than a grant under section 212," shall be inserted.

10 This Act shall be read with, and taken as amending, the Act to be read with Acts Administrator-General's Act, 1874,* II, 1874, and XVII, 1864 and the Official Trustees Act, 1864 §

* Act II of 1874, *supra*

‡ Act VI. of 1889

† Act X of 1865.

§ Act XVII of 1864.

3. A "trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner:

the person who reposes or declares the confidence is called the "author of the trust;" the person who accepts the confidence is called the "trustee;" the person for whose benefit the confidence is accepted is called the "beneficiary;" the subject-matter of the trust is called "trust-property" or "trust-money;" the "beneficial interest" or "interest" of the beneficiary is his right against the trustee as owner of the trust-property; and the instrument (if any) by which the trust is declared is called the "instrument of trust:"

a breach of any duty imposed on a trustee, as such, by any law for the time being in force, is called a "breach of trust:"

and in this Act, unless there be something repugnant in the subject or context, "registered" means registered under the law for the registration of documents for the time being in force: a person is said to have "notice" of fact either when he actually knows that fact, or when, but

for wilful abstention from inquiry or gross negligence, he would have known it, or when information of the fact is given to, or obtained by his agent, under the circumstances mentioned in the Indian Contract Act, 1872,* section 229; and all expressions used herein, and defined in the Indian Contract Act, 1872,* shall be deemed to have the meanings respectively attributed to them by that Act.

* Act IX of 1872.

CHAPTER II.

OF THE CREATION OF TRUSTS.

4. A trust may be created for any lawful purpose. The purpose of a trust is lawful unless it is (a) forbidden by law, or (b) is of such a nature that, if permitted, it would defeat the provisions of any law,

Interpretation-clause.

2. In this Act, unless there be something repugnant in the subject or context,—

“Common carrier” denotes a person, other than the Government, engaged in the business of transporting for hire property from place to place, by land or inland navigation, for all persons indiscriminately :

“Person” includes any association or body of persons, whether incorporated or not : †

Words in the singular number include the plural, and words in the plural include the singular. ‡

3. No common carrier shall be liable for the loss of or damage to property delivered to him to be carried exceeding in value one hundred rupees and of the description contained in the schedule to this Act, unless the person delivering such property to be carried, or some person duly author-

(5) Kumaon and Garhwal.—See *Gazette of India*, 1876, Pt. I., p. 605.

(6) The scheduled portion of the Mirzapur District.—See *Gazette of India*, 1878, Pt. I., p. 383

(7) Jaunsar Bawar.—See *Gazette of India*, 1878, Pt. I., p. 382

(8) The Districts of Hazara, Peshawar, Kohat, Banna, Dera Ismail Khan, and Dera Ghazi Khan.—See *Gazette of India*, 1886, Pt. I., p. 48

(9) The Scheduled Districts of the Central Provinces.—See *Gazette of India*, 1879, Pt. I., p. 771

(10) The District of Sylhet.—See *Gazette of India*, 1879, Pt. I., p. 631.

(11) The rest of Assam (except the North Lushai Hills).—See *Gazette of India*, 1897, Pt. I., p. 299

It has been declared, by notification under s. 3 (b) of the last-mentioned Act, not to be in force in the Scheduled District of Lahaul.—See *Gazette of India*, 1886, Pt. I., p. 301.

It has been extended, by notification under s. 5 of the same Act, to the following Scheduled Districts, namely :—

(1) The North-Western Provinces Terai.—See *Gazette of India*, 1876, Pt. I., p. 505

(2) Ajmere and Merwara.—See *Gazette of India*, 1877, Pt. I., p. 605.

It has been repealed as to carriers by rail by the Indian Railways Act (IV. of 1879). See now the Indian Railways Act (IX. of 1890)

* Cf. definition in s. 3 (39) of the General Clauses Act (X. of 1897)

† Cf. s. 13 (2) of *ibid.*

or (c) is fraudulent, or (d) involves or implies injury to the person or property of another, or (e) the Court regards it as immoral or opposed to public policy.

Every trust of which the purpose is unlawful is void. And where a trust is created for two purposes, of which one is lawful and the other unlawful, and the two purposes cannot be separated, the whole trust is void.

Explanation.—In this section, the expression “law” includes, where the trust-property is immovable and situate in a foreign country, the law of such country.

Illustrations.

(a.) A conveys property to B in trust to apply the profits to the nurture of female foundlings to be trained up as prostitutes: The trust is void

(b.) A bequeaths property to B in trust to employ it in carrying on a smuggling business, and, out of the profits thereof, to support A's children: The trust is void.

(c.) A, while in insolvent circumstances, transfers property to B in trust for A during his life, and after his death for B. A is declared an insolvent: The trust for A is invalid as against his creditors

5. No trust in relation to immovable property is valid unless
 Trust of immovable pro- declared by a non-testamentary instru-
 perty. ment in writing signed by the author of
 the trust or the trustee and registered, or by the will of the author
 of the trust or of the trustee.

No trust in relation to moveable property is valid unless de-
 Trust of moveable pro- clared as aforesaid, or unless the
 perty. ownership of the property is transferred
 to the trustee.

These rules do not apply where they would operate so as to effectuate a fraud.

6. Subject to the provisions of section 5, a trust is created when
 the author of the trust indicates with rea-
 Creation of trust. sonable certainty by any words or acts
 (a) an intention on his part to create thereby a trust, (b) the purpose
 of the trust, (c) the beneficiary, and (d) the trust-property, and (un-
 less the trust is declared by will, or the author of the trust is himself
 to be the trustee) transfers the trust-property to the trustee.

Illustrations.

(a.) A bequeaths certain property to B, “having the fullest confidence that he will dispose of it for the benefit of” C: This creates a trust so far as regards A and C.

contract signed by the owner of such property so delivered as last aforesaid, or by some person duly authorized in that behalf by such owner, limit his liability in respect of the same.

7.* The liability of the owner of any railroad or tramroad constructed under the provisions of the said Act XXII. of 1863,† for the loss of or damage to any property delivered to him to be carried, not being of the description contained in the schedule to this Act, shall not be deemed to be limited or affected by any special contract ;

but the owner of such railroad or tramroad shall be liable for the loss of or damage to property delivered to him to be carried only when such loss or damage shall have been caused by negligence or a criminal act on his part or on that of his agents or servants.

8. Notwithstanding anything hereinbefore contained, every common carrier shall be liable to the common carrier liable for loss or damage caused by neglect or fraud. owner for loss of or damage to any property delivered to such carrier to be carried, where such loss or damage shall have arisen from the negligence or a criminal act of the carrier or any of his agents or servants.

9. In any suit brought against a common carrier for the loss, damage, or non-delivery of goods entrusted to him for carriage, it shall not be necessary for the plaintiff to prove that such loss, damage, or non delivery was owing to the negligence or criminal act of the carrier, his servants, or agents.‡

10. [*Saving of provisions of Act XVIII. of 1854.*] *Repealed by the Indian Railways Act (IX of 1890).*

* S 7 (so far as it relates to railways) has been repealed by the Indian Railways Act (IX of 1890), Ch VII, s 72

† See now the Land Acquisition Act (I of 1894), s 2

‡ This is in accordance with the English Common Law—See *Ross v. Hill*, 2 Com. B 890 *Richard v. Lord, Brighton, & S. C Ry Co*, 7 Com B. 839.

32. Every trustee may reimburse himself, or pay or discharge out of the trust-property, all expenses properly incurred in or about the execution of the trust, or the realisation, preservation, or benefit of the trust-property, or the protection or support of the beneficiary.

If he pays such expenses out of his own pocket, he has a first charge upon the trust-property for such expenses and interest thereon; but such charge (unless the expenses have been incurred with the sanction of a principal Civil Court of original jurisdiction) shall be enforced only by prohibiting any disposition of the trust-property without previous payment of such expenses and interest.

If the trust-property fail, the trustee is entitled to recover, from the beneficiary personally on whose behalf he acted, and at whose request, expressed or implied, he made the payment, the amount of such expenses.

Where a trustee has, by mistake, made an over-payment to the beneficiary, he may reimburse the trust-property out of the beneficiary's interest. If such interest fail, the trustee is entitled to recover, from the beneficiary personally, the amount of such over-payment.

33. A person other than a trustee, who has gained an advantage from a breach of trust, must indemnify the trustee to the extent of the amount actually received by such person under the breach, and, where he is a beneficiary, the trustee has a charge on his interest for such amount.

Nothing in this section shall be deemed to entitle a trustee to be indemnified who has, in committing the breach of trust, been guilty of fraud.

34. Any trustee may, without instituting a suit, apply by petition to a principal Civil Court of original jurisdiction for its opinion, advice, or direction on any present questions respecting the management or administration of the trust-property, other than questions of detail, difficulty, or importance not proper, in the opinion of the Court, for summary disposal.

A copy of such petition shall be served upon, and the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks fit.

The trustee stating in good faith the facts in such petition, and acting upon the opinion, advice, or direction given by the Court, shall be deemed, so far as regards his own responsibility, to have discharged his duties as such trustee in the subject-matter of the application.

The costs of every application under this section shall be in the discretion of the Court to which it is made.

35. When the duties of a trustee, as such, are completed, he

Right to settlement of accounts. is entitled to have the accounts of his administration of the trust-property examined and settled; and, where nothing is due to the beneficiary under the trust, to an acknowledgment in writing to that effect.

36. In addition to the powers expressly conferred by this Act,

General authority of trustee. and by the instrument of trust, and subject to the restrictions (if any) contained in such instrument, and to the provisions of section 17, a trustee may do all acts which are reasonable and proper for the realisation, protection, or benefit of the trust-property, and for the protection or support of a beneficiary who is not competent to contract.*

Except with the permission of a principal Civil Court of original jurisdiction, no trustee shall lease trust-property for a term exceeding twenty-one years from the date of executing the lease, nor without reserving the best yearly rent that can be reasonably obtained.

37. Where the trustee is empowered to sell any trust-property,

Power to sell in lots, and either by public auction or private contract he may sell the same subject to prior charges or not, and either together or in lots, by public auction or private contract, and either at one time or at several times, unless the instrument of trust otherwise directs.

38. The trustee making any such sale may insert such

Power to sell under special conditions. reasonable stipulations either as to title or evidence of title, or otherwise, in any condition of sale or contract for sale, as he thinks fit; and may also buy in the property, or any part thereof, at any sale by auction,

Power to buy in and re-sell. and rescind or vary any contract for sale, and re-sell the property so bought

* In s. 36. the second paragraph, repealed by Act XII. of 1891, Sch. I, has been omitted.

Act XXI. to which, but for the operation of such laws, they would
of 1850. have been entitled;" and whereas it would be beneficial
to extend the principle of that enactment throughout the
territories subject to the government of the East India
Company; It is enacted as follows:—

1. So much of any law or usage now in force within
the territories subject to the govern-
ment of the East India Company as
inflicts on any person forfeiture of
rights or property, or may be held in
any way to impair or affect any right
of inheritance by reason of his or her renouncing, or having
been excluded from the communion of, any religion, or
being deprived of caste,* shall cease to be enforced as law
in the Courts of the East India Company, and in the Courts
established by Royal Charter within the said territories.†

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- (4) The scheduled portion of the Mirzapur District (see
Gazette of India, 1879, Pt. I, p. 383) ;
(5) Jaunpur Bawar (see *Gazette of India*, 1879, Pt. I., p. 382) ;
(6) The Districts of Peshawar, Hazara, Kohat, Bannu, Dera
Ismail Khan, and Dera Ghazi Khan (see *Gazette of
India*, 1886, Pt. I., p. 48) ;
(7) The District of Lahaul (see *Gazette of India*, 1886,
Pt. I., p. 301) ;
(8) The Scheduled Districts of the Central Provinces (see
Gazette of India, 1879, Pt. I, p. 771) ;
(9) Coorg (see *Gazette of India*, 1878, Pt. I., p. 747) .
(10) The District of Sylhet (see *Gazette of India*, 1879,
Pt. I., p. 631)
(11) The rest of Assam (except the North Lushai Hills) (see
Gazette of India, 1897, Pt. I., p. 299) ;
(12) The Porabhat Estate in the Singbhum District (see
Gazette of India, 1897, Pt. I., p. 1059).
It has been extended, by notification under s. 5 of the last-
mentioned Act, to the following Scheduled Districts, namely —
(1) Kumaon and Garhwal (see *Gazette of India*, 1876, Pt.
I, p. 606) ;
(2) The North-Western Provinces Tarai (see *Gazette of
India*, 1876, Pt. I, p. 505).
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* 13 B. L. R. 25, 75-76.
† 9 Moo. I. A. 239

in, or as to which the contract is so rescinded, without being responsible to the beneficiary for any loss occasioned thereby.

Where a trustee is directed to sell trust-property, or to invest trust-money in the purchase of property, he may exercise a reasonable discretion as to the time of effecting the sale or purchase.

Illustrations.

(a) A bequeaths property to B, directing him to sell it with all convenient speed, and pay the proceeds to C: This does not render an immediate sale imperative.

(b) A bequeaths property to B, directing him to sell it at such time and in such manner as he shall think fit, and invest the proceeds for the benefit of C: This does not authorize B, as between him and C, to postpone the sale to an indefinite period.

39 For the purpose of completing any such sale, the trustee shall have power to convey or otherwise dispose of the property sold in such manner as may be necessary.

40. A trustee may, at his discretion, call in any trust-property invested in any security, and invest the same on any of the securities mentioned or referred to in section 20, and from time to time vary any such investments for others of the same nature:

Provided that, where there is a person competent to contract, and entitled at the time to receive the income of the trust-property for his life, or for any greater estate, no such change of investment shall be made without his consent in writing.

41. Where any property is held by a trustee in trust for a minor, such trustee may, at his discretion, pay to the guardians (if any) of such minor, or otherwise apply, for or towards his maintenance or education or advancement in life, or the reasonable expenses of his religious worship, marriage, or funeral, the whole or any part of the income to which he may be entitled in respect of such property; and such trustee shall accumulate all the residue of such income by way of compound interest, by investing the same and the resulting income thereof from time to time in any of the securities mentioned or referred to in section 20, for the benefit of the person who shall ultimately become entitled to the property from which such accumulations have arisen:

(2) * All Courts constituted, appointments, nominations, rules, and orders made, jurisdiction and powers conferred, and lists published under the Bengal Civil Courts Act, 1871, or any enactment thereby repealed, or purporting, expressly or impliedly, to have been so constituted, made, conferred, and published, shall be deemed to have been respectively constituted, made, conferred, and published under this Act; and

(3) Any enactment or document referring to the Bengal Civil Courts Act, 1871, or to any enactment thereby repealed, shall be construed to refer to this Act, or to the corresponding portion thereof.

CHAPTER II.

CONSTITUTION OF CIVIL COURTS.

Classes of Courts.

3. There shall be the following classes of Civil Courts under this Act, namely:—

- (1) the Court of the District Judge,
- (2) the Court of the Additional Judge;
- (3) the Court of the Subordinate Judge; and
- (4) the Court of the Munsif.

4. The Local Government may, with the previous sanction of the Governor-General in Council, increase or reduce the number of District Judges and Subordinate Judges now fixed.

5. The Local Government may, subject to the control of the Governor-General in Council, alter the number of Munsifs now fixed:

Provided that, except in the case of Munsifs whose monthly salary does not exceed two hundred and fifty rupees, an increase of the number of Munsifs now fixed shall not be made by the Local Government without the previous sanction of the Governor-General in Council.

* Here the word "But," repealed by Act XII. of 1891, has been omitted.

Provided that such trustee may, at any time, if he thinks fit, apply the whole or any part of such accumulations as if the same were part of the income arising in the then current year.

Where the income of the trust-property is insufficient for the minor's maintenance or education or advancement in life, or the reasonable expenses of his religious worship, marriage, or funeral, the trustee may, with the permission of a principal Civil Court of original jurisdiction, but not otherwise, apply the whole or any part of such property for or towards such maintenance, education, advancement, or expenses.

Nothing in this section shall be deemed to affect the provision of any local law for the time being in force relating to the persons and property of minors.

42. Any trustees or trustee may give a receipt in writing for any money, securities, or other moveable property payable, transferable, or deliverable to them or him by reason, or in the exercise, of any trust or power: and, in the absence of fraud, such receipt shall discharge the person paying, transferring, or delivering the same therefrom, and from seeing to the application thereof, or being accountable for any loss or misapplication thereof.

Power to compound, &c.

43. Two or more trustees acting together may, if and as they think fit,—

(a) accept any composition or any security for any debt or for any property claimed;

(b) allow any time for payment of any debt;

(c) compromise, compound, abandon, submit to arbitration, or otherwise settle any debt, account, claim, or thing whatever relating to the trust; and,

(d) for any of those purposes, enter into, give, execute, and do such agreements, instruments of composition or arrangement, releases, and other things as to them seem expedient without being responsible for any loss occasioned by any act or thing so done by them in good faith.

The powers conferred by this section on two or more trustees acting together may be exercised by a sole acting trustee when, by the instrument of trust (if any), a sole trustee is authorized to execute the trusts and powers thereof.

10. (1) In the event of the death, resignation, or removal of the District Judge, or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence from the place at which his Court is held, the Additional Judge, or, if an Additional Judge is not present at that place, the senior Subordinate Judge present thereat, shall, without relinquishing his ordinary duties, assume charge of the office of the District Judge, and shall continue in charge thereof until the office is resumed by the District Judge, or assumed by an officer appointed thereto.

(2) While in charge of the office of the District Judge, the Additional Judge or Subordinate Judge, as the case may be, may, subject to any rules which the High Court may make in this behalf, exercise any of the powers of the District Judge.

11. (1) In the event of the death, resignation, or removal of a Subordinate Judge, or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence from the place at which his Court is held, the District Judge may transfer all or any of the proceedings pending in the Court of the Subordinate Judge either to his own Court, or to any Court under his administrative control, competent to dispose of them.

(2) Proceedings transferred under sub-section (1) shall be disposed of as if they had been instituted in the Court to which they are so transferred :

(3) Provided that the District Judge may re-transfer to the Court of the Subordinate Judge or his successor any proceedings transferred under sub-section (1) to his own or any other Court.

(4) For the purpose of proceedings which are not pending in the Court of the Subordinate Judge on the occurrence of an event referred to in sub-section (1), and with respect to which that Court has exclusive jurisdiction, the District Judge may exercise all or any of the jurisdiction of that Court.

12. (1) A District Judge, on the occurrence within the local limits of his jurisdiction of any vacancy in the office of Munsif, may appoint such person as he thinks fit to act in the office until that person is relieved by a Munsif appointed under section 7, or his appointment is cancelled by the District Judge.

This section applies only if and as far as a contrary intention is not expressed in the instrument of trust (if any), and shall have effect subject to the terms of that instrument, and to the provisions therein contained.

This section applies only to trusts created after this Act comes into force.

44. When an authority to deal with the trust-property is given to several trustees, and one of them of whom one disclaims or dies, the authority may be exercised by the continuing trustees, unless, from the terms of the instrument of trust, it is apparent that the authority is to be exercised by a number in excess of the number of the remaining trustees.

45. Where a decree has been made in a suit for the execution of a trust, the trustee must not exercise any of his powers except in conformity with such decree, or with the sanction of the Court by which the decree has been made, or, where an appeal against the decree is pending, of the Appellate Court.

CHAPTER V.

OF THE DISABILITIES OF TRUSTEES.

46. A trustee who has accepted the trust cannot afterwards renounce it except (a) with the permission of a principal Civil Court of original jurisdiction, or (b), if the beneficiary is competent to contract, with his consent, or (c) by virtue of special power in the instrument of trust.

47. A trustee cannot delegate his office or any of his duties, either to a co-trustee or to a stranger, unless (a) the instrument of trust so provides, or (b) the delegation is in the regular course of business, or (c) the delegation is necessary, or (d) the beneficiary, being competent to contract, consents to the delegation.

Explanation.—The appointment of an attorney or proxy to do an act merely ministerial, and involving no independent discretion, is not a delegation within the meaning of this section.

(g) A judicial act done by a Civil Court on a day specified in the list shall not be invalid by reason only of its having been done on that day.

16. Every Civil Court under this Act shall use a seal of such form and dimensions as are prescribed by the Local Government.

17. (1) Where any Civil Court under this Act has from any causes ceased to have jurisdiction with respect to any case, any proceedings in relation to that case which, if that Court had not ceased to have jurisdiction, might have been had therein may be had in the Court to which the business of the former Court has been transferred.

(2) Nothing in this section applies to cases for which provision is made in section 623* or section 649* of the Code of Civil Procedure, or in any other enactment for the time being in force

CHAPTER III.

ORDINARY JURISDICTION.

18. Save as otherwise provided by any enactment for the time being in force, the jurisdiction of a District judge or Subordinate Judge extends, subject to the provisions of section 15 of the Code of Civil Procedure,† to all original suits for the time being cognizable by Civil Courts.

19. (1) Save as aforesaid, and subject to the provisions of sub-section (2), the jurisdiction of a Munsif extends to all like suits of which the value does not exceed one thousand rupees.

(2) The Local Government may, on the recommendation of the High Court, direct, by notification in the official Gazette, with respect to any Munsif named therein, that his jurisdiction shall ex-

* I.e., ss. 623 and 649 of Act XIV. of 1882 (the old Code now repealed) which should now mean to apply to s. 114 with r. 1 of O. XLVII, and ss. 36 and 37, respectively, of Act V. of 1908 (the new Code entirely repealing the former Act)

† Act V. of 1908.

Illustrations.

(a.) A bequeaths certain property to B and C on certain trusts to be executed by them or the survivor of them or the assigns of such survivor. B dies. C may bequeath the trust-property to D and E upon the trusts of A's will.

(b.) A is a trustee of certain property with power to sell the same: A may employ an auctioneer to effect the sale.

(c.) A bequeaths to B fifty houses let at monthly rents in trust to collect the rents, and pay them to C. B may employ a proper person to collect these rents.

48. When there are more trustees than one, all must join in the execution of the trust except where the instrument of trust otherwise provides.
Co-trustees cannot act singly.

49. Where a discretionary power conferred on a trustee is not exercised reasonably and in good faith, such power may be controlled by a principal Civil Court of original jurisdiction.
Control of discretionary power.

50. In the absence of express direction to the contrary contained in the instrument of trust, or of a contract to the contrary entered into with the beneficiary or the Court at the time of accepting the trust, a trustee has no right to remuneration for his trouble, skill, and loss of time in executing his trust.
Trustee may not charge for services.

Nothing in this section applies to any Official Trustee, Administrator-General, Public Curator, or person holding a certificate of administration.

51. A trustee may not use or deal with the trust-property for his own profit, or for any other purpose unconnected with the trust.
Trustee may not use trust-property for his own profit.

52. No trustee whose duty it is to sell trust-property, and no agent employed by such trustee for the purpose of the sale, may, directly or indirectly, buy the same or any interest therein, on his own account, or as agent for a third person.
Trustee for sale or his agent may not buy.

53. No trustee, and no person who has recently ceased to be a trustee, may, without the permission of a principal Civil Court of original jurisdiction, buy or become mortgagee of a beneficiary's interest without permission.
Trustee may not buy beneficiary's interest without permission.

(2) The District Judge may withdraw any appeal so transferred, and either hear and dispose of it himself, or transfer it to a Court under his administrative control competent to dispose of it.

(3) Appeals transferred under this section shall be disposed of subject to the rules applicable to like appeals when disposed of by the District Judge.

28 (1) The High Court may, by general or special order, Exercise by Subordinate Judge or Munsif of jurisdiction of District Court in certain proceedings. authorize any Subordinate Judge or Munsif to take cognizance of, or any District Judge to transfer to a Subordinate Judge or Munsif under his administrative control, any of the proceedings next hereinafter mentioned, or any class of those proceedings specified in the order.

(2) The proceedings referred to in sub-section (1) are the following, namely—

(a) proceedings under Bengal Regulation V., 1799 (*to limit the Interference of the Zillah and City Courts of Dewani Adalat in the Execution of Wills and Administration to the Estates of persons dying intestate*);

(b) [*Repealed by the Guardians and Wards Act (VIII. of 1890).*]

(c) [*Repealed by the Succession Certificate Act (VII. of 1889).*]

(d) proceedings under the Indian Succession Act, 1865,* and the Probate and Administration Act, 1881,† which cannot be disposed of by District Delegates, and

(e) references by Collectors under section 322C‡ of the Code of Civil Procedure.

(3) The District Judge may withdraw any such proceedings taken cognizance of by, or transferred to, a Subordinate Judge or Munsif, and may either himself dispose of them, or transfer them to a Court under his administrative control competent to dispose of them.

* Act X. of 1865.

† Act V of 1881.

‡ New Third Schedule of Act V. of 1908.

or lessee of the trust-property or any part thereof; and such permission shall not be given unless the proposed purchase, mortgage, or lease is manifestly for the advantage of the beneficiary.

And no trustee, whose duty it is to buy or to obtain a mortgage or lease of particular property for the beneficiary, may buy it or any part thereof, or obtain a mortgage or lease of it or any part thereof, for himself.

54. A trustee or co-trustee whose duty it is to invest trust-money on mortgage or personal security, must not invest it on a mortgage by, or on the personal security of, himself or one of his co-trustees.

CHAPTER VI.

OF THE RIGHTS AND LIABILITIES OF THE BENEFICIARY.

55. The beneficiary has, subject to the provisions of the instrument of trust, a right to the rents and profits of the trust-property.

56. The beneficiary is entitled to have the intention of the author of the trust specifically executed to the extent of the beneficiary's interest;

and, where there is only one beneficiary, and he is competent to contract, or where there are several beneficiaries, and they are competent to contract, and all of one mind, he or they may require the trustee to transfer the trust-property to him or them, or to such person as he or they may direct.

When property has been transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in the second clause of this section applies to such property during her marriage.

Illustrations.

(a.) Certain Government securities are given to trustees upon trust to accumulate the interest until A attains the age of 24, and then to transfer the gross amount to him: A, on attaining majority, may, as the person exclusively interested in the trust-property, require the trustees to transfer it immediately to him.

Suspension or removal of
Munsif by High Court.

28. (1) The High Court may appoint a commission for enquiring into alleged misconduct of a Munsif.

(2) On receiving the report of the result of the inquiry, the High Court may, if it thinks fit, remove or suspend the Munsif.

(3) The provisions of Act No. XXXVII. of 1850 (*for regulating Inquiries into the Behaviour of Public Servants*) shall apply to inquiries under this section, the powers conferred by that Act on the Government being exercised by the High Court.

(4) The High Court may, before appointing the commission, suspend the Munsif pending the result of the inquiry.

(5) The High Court may, without appointing a commission, remove or suspend a Munsif.

29. (1) A District Judge may, whenever he sees urgent necessity for so doing, suspend a Munsif under his administrative control.

(2) Whenever a District Judge suspends a Munsif under subsection (1), he shall forthwith report to the High Court the circumstances of the suspension, and the High Court shall make such order with respect thereto as it thinks fit.

CHAPTER VI.

MINISTERIAL OFFICERS

30 District Judges shall appoint the ministerial officers of their Courts, and, subject only to the control of the Local Government, may remove or suspend those officers, or fine them in an amount not exceeding one month's salary.

Appointment and removal
of ministerial officers of other
Courts.

31. (1) The ministerial officers of the Civil Courts subject to the administrative control of the District Judge shall be appointed,—

(a) in the case of an appointment not likely to last, and not lasting longer than two months, by those Courts, and,

(b) in any other case, by the District Judge.

(b) A bequeaths Rs. 10,000 to trustees upon trust to purchase an annuity for B, who has attained his majority, and is otherwise competent to contract: B may claim the Rs. 10,000.

(c.) A transfers certain property to B, and directs him to sell or invest it for the benefit of C, who is competent to contract: C may elect to take the property in its original character.

57. The beneficiary has a right, as against the trustee and all persons claiming under him with notice of the trust, to inspect and take copies of the instrument of trust, the documents of title relating solely to the trust-property, the accounts of the trust-property, and the vouchers (if any) by which they are supported, and the cases submitted, and opinions taken, by the trustee for his guidance in the discharge of his duty.

58. The beneficiary, if competent to contract, may transfer his interest, but subject to the law for the time being in force as to the circumstances and extent in and to which he may dispose of such interest:

Provided that, when property is transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in this section shall authorize her to transfer such interest during her marriage.

59. Where no trustees are appointed, or all the trustees die, disclaim, or are discharged, or where, for any other reason, the execution of a trust by the trustee is or becomes impracticable, the beneficiary may institute a suit for the execution of the trust, and the trust shall, so far as may be possible, be executed by the Court until the appointment of a trustee or new trustee.

60. The beneficiary has a right (subject to the provisions of the instrument of trust) that the trust-property shall be properly protected and held and administered by proper persons, and by a proper number of such persons.

Explanation 1.—The following are not proper persons within the meaning of this section:—

A person domiciled abroad; an alien enemy; a person having an interest inconsistent with that of the beneficiary; a person in insolvent circumstances; and, unless the personal law of the beneficiary allows otherwise, a married woman and a minor.

CHAPTER VII.

SUPPLEMENTAL PROVISIONS.

36. (1) The Local Government may invest with the powers of any Civil Court under this Act, by name or in virtue of office,—

(a) any officer in the Chulia Nagpur, "Sambalpur" Jul-paigori, or Darjiling District, or in any part of the territories administered by the Chief Commissioner of Assam, except the district of Silhat, or,

(b) after consultation with the High Court, any officer serving in any other part of the territories to which this Act extends, and belonging to a class defined in this behalf by the Local Government with the previous sanction of the Governor-General in Council.

(2) Nothing in sections 4 to 8 (both inclusive), or sections 10 to 12 (both inclusive), or sections 27 to 35 (both inclusive) applies to any officer so invested, but all the other provisions of this Act shall, so far as those provisions can be made applicable, apply to him as if he were a Judge of the Court with the powers of which he is invested.

(3) Where, in the territories mentioned in clause (a) of sub-section (1), the same local jurisdiction is assigned to two or more officers invested with the powers of a Munsif, the officer invested with the powers of a District Judge may, with the previous sanction of the Local Government, delegate his functions under sub-section (2) of section 13 to an officer invested with the powers of a Sub-ordinate Judge, or to one of the officers invested with the powers of a Munsif.

(4) Where the place at which the Court of an officer invested with powers under sub-section (1) is to be held has not been fixed under section 14, the Court may be held at any place within the local limits of its jurisdiction.

37. (1) Where, in any suit or other proceeding, it is necessary for a Civil Court to decide any question regarding succession, inheritance, marriage, or caste, or any religious usage or institution, the Muhamma-

* The word "Sambalpur" has been inserted by the Sambalpur Civil Courts Act (Ben. Act IV. of 1906), s. 6.

Explanation II.—When the administration of the trust involves the receipt and custody of money, the number of trustees should be two at least.

Illustrations.

(a) A, one of several beneficiaries, proves that B, the trustee, has improperly disposed of part of the trust-property, or that the property is in danger from B's being in insolvent circumstances, or that he is incapacitated from acting as trustee: A may obtain a receiver of the trust-property.

(b.) A bequeaths certain jewels to B in trust for C. B dies during A's lifetime, then A dies: C is entitled to have the property conveyed to a trustee for him.

(c) A conveys certain property to four trustees in trust for B. Three of the trustees die. B may institute a suit to have three new trustees appointed in the place of the deceased trustees.

(d) A conveys certain property to three trustees in trust for B. All the trustees disclaim. B may institute a suit to have three trustees appointed in place of the trustees so disclaiming.

(e) A, a trustee for B, refuses to act, or goes to reside permanently out of British India, or is declared an insolvent, or compounds with his creditors, or suffers a co-trustee to commit a breach of trust: B may institute a suit to have A removed, and a new trustee appointed in his room.

61. The beneficiary has a right that his trustee shall be

Right to compel to any act of duty.	compelled to perform any particular act of his duty as such, and restrained from committing any contemplated or probable breach of trust.
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Illustrations.

(a) A contracts with B to pay him monthly Rs. 100 for the benefit of C. B writes and signs a letter declaring that he will hold in trust for C the money so to be paid. A fails to pay the money in accordance with his contract. C may compel B on a proper indemnity to allow C to sue on the contract in B's name.

(b) A is trustee of certain land, with a power to sell the same, and pay the proceeds to B and C equally. A is about to make an improvident sale of the land: B may sue on behalf of himself and C for an injunction to restrain A from making the sale.

62. Where a trustee has wrongfully bought trust-property,

Wrongful purchase by trustee.	the beneficiary has a right to have the property declared subject to the trust, or re-transferred by the trustee, if it remains in his hands unsold, or if it has been bought from him by any person with notice of the trust, by such person. But in such case the beneficiary must repay the purchase-money paid by the trustee, with interest and such
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40. (1) This section and sections 15, 32, 37, 38, and 39
Application of Act to apply to Courts of Small Causes con-
Provincial Courts of Small stituted under the Provincial Small Cause
Causes. Courts Act, 1887.*

(2) Save as provided by that Act, the other sections of this Act
do not apply to those Courts

* Act No 1X. of 1887.

other expenses (if any) as he has properly incurred in the preservation of the property; and the trustee or purchaser must (a) account for the nett profits of the property, (b) be charged with an occupation-rent, if he has been in actual possession of the property, and (c) allow the beneficiary to deduct a proportionate part of the purchase money if the property has been deteriorated by the acts or omissions of the trustee or purchaser.

Nothing in this section—

(a) impairs the rights of lessees and others who, before the institution of a suit to have the property declared subject to the trust or re-transferred, have contracted in good faith with the trustee or purchaser; or

(b) entitles the beneficiary to have the property declared subject to the trust or re-transferred where he, being competent to contract, has himself, without coercion or undue influence having been brought to bear on him, ratified the sale to the trustee with full knowledge of the facts of the case, and of his rights as against the trustee.

63. Where trust-property comes into the hands of a third

Following trust-property— into the hands of third persons;	person inconsistently with the trust, the beneficiary may require him to admit formally, or may institute a suit for a declaration that the property is comprised in the trust.
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Where the trustee has disposed of trust-property, and the money or other property which he has received therefor can be traced in his hands or the hands of his legal representative or legatee, the beneficiary has, in respect thereof, rights as nearly as may be the same as his rights in respect of the original trust-property.

Illustrations.

(a) A, a trustee for B, of Rs. 10,000, wrongfully invests the Rs. 10,000 in the purchase of certain land. B is entitled to the land.

(b) A, a trustee, wrongfully purchases land in his own name, partly with his own money, partly with money subject to a trust for B: B is entitled to a charge on the land for the amount of the trust-money so misemployed.

Saving of rights of certain transferees.

64. Nothing in section 63 entitles the beneficiary to any right in respect of property in the hands of—

deemed to have been respectively constituted, made, conferred, and done under the said Bengal, Agra, and Assam Civil Courts Act, 1887.*

4. Any enactment or document referring to the said Central Provinces Courts Act, 1904,† or to any enactment repealed thereby shall, in respect of the said district, be construed to refer to the said Bengal, Agra, and Assam Civil Courts Act, 1887,* or the corresponding portion thereof.

5. Nothing in this Act shall affect any proceeding which, at the commencement thereof, is pending in any Civil Court in the Sambalpur district, and every such proceeding shall be continued as if this Act had not been passed :

Provided that appeals from decrees and orders passed by Civil Courts, and not appealed against, before the commencement of this Act, shall lie to the Court exercising the jurisdiction under the Bengal, Agra, and Assam Civil Courts Act, 1887,* which corresponds, as far as may be, to the jurisdiction of the Court to which such appeals would have lain if this Act had not been passed.

6. In clause (a) of sub-section (1) of section 36 of the Bengal, Agra, and Assam Civil Courts Act, (1) (a) of Act XII. of 1887. 1887,* after the words "Chutia Nagpur," the word "Sambalpur" shall be inserted.

* Act XII of 1887

† Act II of 1901

contract with the person for whose benefit he holds it, or with any one through whom such person claims, he may, without the permission of the Court, buy, or become lessee or mortgagee of, the property or any part thereof.

96. Nothing contained in this chapter shall impair the rights of transferees in good faith for consideration, or create an obligation in evasion of any law for the time being in force.

Saving of rights of bona-fide purchasers.

THE SCHEDULE:
REPEAL OF ENACTMENTS.
(See section 2.)
STATUTE.

Year and chapter.	Short title.	Extent of repeal.
29 Car II., c 3	The Statute of Frauds	Sections 7, 8, 9, 10, and 11.

ACTS OF THE GOVERNOR-GENERAL IN COUNCIL.

Number and year.	Short title.	Extent of repeal.
XXVIII. of 1866	The Trustees' and Mortgagees' Powers Act, 1866	Sections 2, 3, 4, 5, 32, 33, 34, 35, 36, and 37. In sections 39* and 43, the word "trustee," wherever it occurs, and in section 43 the words, "management or" and "the trust-property or."
I of 1877	The Specific Relief Act, 1877.	In section 12, the first illustration.

* In the schedule, the figures 39 have been repealed by Act XII. of 1891, Sch. I., but the two words between which the figures 39 stand are allowed to stand as they are.

SECTIONS.

23. Situation of subordinate Courts
24. Classes of Subordinate Judges.
Jurisdiction of Subordinate Judge of first class.
Jurisdiction of Subordinate Judge of second class
25. Special Jurisdiction of Subordinate Judge of first class.
26. Appeals from his decision.
27. Appellate jurisdiction of Subordinate Judge of first class.
28. Power to invest Subordinate Judges with small-cause powers.
29. Seal of Subordinate Judge.
- 30, 31 [*First Subordinate Judges, Pending proceedings*] *Repealed by Act XII. of 1870.*
32. Reference of Government suits. Proviso.
Removal or Suspension.
33. Commission of enquiry into alleged misconduct.
34. Suspension of Subordinate Judges by High Court; by District Judge.

Saving of power of Government to suspend or dismiss.

SECTIONS

PART VII.

TEMPORARY VACANCIES.

35. Temporary vacancy of office of District Judge.
36. Delegation of powers of District Judge.
37. Temporary vacancy of office of Subordinate Judge.

PART VIII.

MINISTERIAL OFFICERS.

38. Appointment, &c., of ministerial officers
 39. Duties of ministerial officers.
 40. Power to appoint Clerks of the Courts.
-

PART IX.

MISCELLANEOUS.

41. Rules for keeping proceedings.
 42. Fees for process
 43. Sitzings of Courts.
Vacation.
-

[SCHEDULE—ENACTMENTS REPEALED.] *Repealed by Act XIV. of 1870.*

(which shall hereafter be called districts), and create new districts for the purposes of this Act.

4. The Governor of Bombay in Council may also, from time to time, by notification in the Government Gazette, alter the position of the *sadr* station in any district, and fix the position of the *sadr* station in any new district.

PART III.

[DISTRICT COURTS.]

5. There shall be in each district a District Court presided over by a Judge to be called the District Judge. He shall be appointed by the Governor of Bombay in Council, by whose authority only he shall be liable to be suspended or removed from his appointment.*

6. The District Judge shall ordinarily hold the District Court at the *sadr* station in his district, but may, with the previous sanction of the High Court, hold it elsewhere within the district.

7. The District Court shall be the principal Court of original civil jurisdiction in the district within the meaning of the Code of Civil Procedure.†

8. Except as provided in sections 16, 17, and 26, the Appellate jurisdiction of District Court shall be the Court of Appeal from all decrees and orders passed by the subordinate Courts from which an appeal lies under any law for the time being in force.

9. The District Judge shall have general control over all the Civil Courts and their establishments within the district, and it shall be his duty to inspect, or to cause one of his assistants to inspect, the proceedings of all the Courts subordinate to him, and to give such directions with respect to matters not provided for by law as he may think necessary.

* Certain words, repealed by Act XII. of 1876, have here been omitted.

† Act V. of 1908.

ACT XXVIII. OF 1855

(The Usury Laws Repeal Act, 1855).*

RECEIVED THE G.-G.'S ASSENT ON THE 19TH
SEPTEMBER 1855.

An Act for the Repeal of the Usury Laws.

WHEREAS it is expedient to repeal the laws now in force relating to Usury; It is enacted as follows:—

Preamble.

1. [*Repeal of enactments.*] *Repealed by the Repealing Act (XIV. of 1870).*

2. In any suit in which interest is recoverable, the amount Rate of interest to be shall be adjudged or decreed by the decreed by Courts Court at the rate (if any) agreed upon by the parties; and, if no rate shall have been agreed upon, at such rate as the Court shall deem reasonable.

3. Whenever a Court shall direct that a judgment or decree Rate of interest upon a shall bear interest, or shall award in-judgment or decree. terest upon a judgment or decree, it may order the interest to be calculated at the rate allowed in the

* This short title has been given by the Indian Short Titles Act (XIV. of 1897)

This Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act (XV of 1874), s 3

It has been declared, by notification under s 3 (a) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts, namely:—

(1) Sindh—*See Gazette of India*, 1880, Pt. I, p. 672 :

(2) West Jalpaiguri, the Western Dvars, the Western Hills of Dgrjuling, the Darjuling Tarai, and the Damson Sub-division of the Darjuling District.—*See Gazette of India*, 1881, Pt. I., p. 74 :

(3) The District of Hazaribagh.—*See Gazette of India*, 1881, Pt. I., p. 507 :

2,000—3-11-1909.

Act XXVIII., 1855.—I.

13. All Regulations and Acts now or hereafter in force, and Enactments applied to applying to a District Judge, shall be deemed to apply also to the Joint Judge, Joint Judge's seal. Judge; and the seal of the Joint Judge shall be the same as is used by the District Judge.

PART V.

ASSISTANT JUDGES.

14. The Governor of Bombay in Council, under the general Power to appoint Assistant control of the Governor-General of India in Council, may appoint one or more assistants to the District Judge, and may suspend or remove from his appointment any assistant so appointed. . . . *

15. An Assistant Judge shall ordinarily hold his Court at the same place as the District Judge; but he may hold his Court elsewhere within the district whenever the District Judge shall, with the previous sanction of the High Court, direct him so to do.

16. The District Judge may refer to any Assistant Judge subordinate to him original suits of which the subject-matter does not amount to 10,000 rupees in amount or value, and miscellaneous applications not being of the nature of appeals.

The Assistant Judge shall have jurisdiction to try such suits, and to dispose of such applications.

Where the Assistant Judge's decrees and orders in such cases are appealable, the appeal shall lie to the District Judge, or to the High Court, according as the amount or value of the subject-matter does not exceed or exceeds 5,000 rupees.†

17. The Governor of Bombay in Council may, by notification in the Government Gazette, empower any Assistant Judge to try such appeals from the decrees and orders of the subordinate Courts as would

* The rest of s. 14, repealed by Act XII. of 1876, have here been omitted.

† A portion of s. 16, as originally enacted, has here been omitted, having been repealed by Acts VII of 1889 and VIII. of 1890.

judgment or decree upon the principal sum adjudged, or at such other rate as the Court shall think fit.

4. A mortgage or other contract for the loan of money, by Contracts for usufruct of which it is agreed that the use or usufruct property in lieu of interest. of any property shall be allowed in lieu of interest, shall be binding upon the parties.

5. Whenever, under the Regulations of the Bengal Code,* a deposit may be made of the principal sum and interest due upon any mortgage or conditional sale of land hereafter to be entered into, the amount of interest to be deposited shall be at the rate stipulated in the contract, or, if no rate has been stipulated, and interest be payable under the terms of the contract, at the rate of twelve per centum per annum. Proviso.

- (4) The District of Lohardaga.—*See Gazette of India*, 1881, Pt. I., p. 508 :
- (5) The District of Manbhum.—*See Gazette of India*, 1881, Pt. I., p. 509 :
- (6) Pargana Dhalbhum in the District of Singhbhum —*See Gazette of India*, 1881, Pt. I., p. 510 :
- (7) The scheduled portion of the Mirzapur District.—*See Gazette of India*, 1879, Pt. I, p. 383
- (8) Jaunsar Bawar —*See Gazette of India*, 1879, Pt. I, p. 382 :
- (9) The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, and Dera Ghazi Khan —*See Gazette of India*, 1886, Pt. I., p. 48 :
- (10) The District of Lahaul.—*See Gazette of India*, 1886, Pt. I, p. 301 :
- (11) The Scheduled Districts of the Central Provinces.—*See Gazette of India*, 1879, Pt. I., p. 771 :
- (12) The District of Sylhet —*See Gazette of India*, 1879, Pt. I., p. 631 :
- (13) The Districts of Kamrup, Naugong, Darrang, Sibsagar, Lakhimpur, Goalpara (excluding the Eastern Dvars), and Cachar (excluding the North Cachar Hills).—*See Gazette of India*, 1878, Pt. I., p. 533

It has been extended, under s. 5 of the last-mentioned Act, to the following Scheduled Districts, namely :—

- (1) Kumaon and Garhwal —*See Gazette of India*, 1876, Pt. I., p. 606 :
- (2) The North-Western Provinces Tarai —*See Gazette of India*, 1876, Pt. I., p. 505.

* *See Ben. Reg. I. of 1798, s. 2.* This Regulation is, however, now in force only in the Santhal Parganas and possibly in the Chota Nagpur Division ; and, with the exception of the parts which relate to interest, the Regulation is also in force in the Punjab —*See the Punjab Code, Ed 1888*

22. The Judges of such subordinate Courts shall be appointed by the Governor of Bombay in Council, and shall be called Subordinate Judges.

No person shall be appointed a Subordinate Judge unless he be a subject of the Queen who has practised five years as an advocate of a High Court in India, or as a vakil in the High Court of Judicature in Bombay, or who has qualified for the duties of a Subordinate Judge according to such tests as may for the time being be prescribed by such High Court, or who has taken the degree of Bachelor of Laws in the University of Bombay

The tests so prescribed by the High Court shall be notified in the Government Gazette.

22A.* The Governor-General in Council may, by notification in the official Gazette, fix, and, by like notification, from time to time, alter, the local limits of the ordinary jurisdiction of the Subordinate Judges.

23. The Subordinate Judges shall hold their Courts at such place or places as the Governor of Bombay in Council may, from time to time, appoint within the local limits of their respective jurisdictions.

Wherever more than one such place is appointed, the District Judge shall, subject to the control of the High Court, fix the days on which the Subordinate Judge shall hold his Court at each of such places, and the Subordinate Judge shall cause such days to be duly notified throughout the local limits of his jurisdiction

The same person may be the Judge of more than one subordinate Court; and in such cases the District Judge shall, subject to the control of the High Court, prescribe rules for regulating the time during which the Subordinate Judge shall sit in each Court.

The Judge of any subordinate Court may, with the previous sanction of the High Court, be deputed by the District Judge to the Court of another Subordinate Judge for the purpose of assisting him in the disposal of the suits on his file.

24. The Subordinate Judges shall be of two classes.

Classes of Subordinate Judges.

* S. 22A has been added by Act IX of 1880, s. 2.

vided that, in the latter case, the amount deposited shall be subject to the decision of the Court as to the rate at which interest shall be calculated.

6. In any case in which an adjustment of accounts may be necessary between the lender and the borrower of money upon any mortgage, conditional sale of landed property, or other contract whatsoever, which may be entered into after the passing of this Act, interest shall be calculated at the rate stipulated therein; or, if no rate of interest shall have been stipulated, and interest be payable under the terms of the contract, at such rate as the Court shall deem reasonable.

7. [*Saving of prior transactions.*] *Repealed by the Repealing Act (XIV. of 1870).*

8. [*Commencement of Act.*] *Repealed by the Repealing Act (XIV. of 1870).*

SCHEDULE OF REPEALED ENACTMENTS.

[*Repealed by the Repealing Act (XIV. of 1870).*]

a Judge of a Court of Small Causes, for the trial of suits cognizable by such Courts up to the amount of 500 rupees, and any Subordinate Judge of the second class with the same jurisdiction up to the amount of 50 rupees.*

The Governor of Bombay in Council may, whenever he thinks fit, withdraw such jurisdiction from any Subordinate Judge so invested.

29. Each Subordinate Judge shall use a seal one inch and-a-half in diameter, bearing the Seal of Subordinate Judge. Royal Crown with the following inscription in English and the principal language of the district—
“Subordinate Judge of”

30, 31. [*First Subordinate Judges; Pending proceedings.*]
Repealed by Act XII. of 1876.

32.† No Subordinate Judge or Court of Small Causes shall receive or register a suit in which the Reference of Government suits. Government or any officer of Government in his official capacity is a party; but, in every such case, such Judge or Court shall refer the plaintiff to the District Judge in whose Court alone (subject to the provisions of section 19) such suit shall be instituted:

Provided that nothing in this section shall be deemed to apply to any suit, merely because—
Proviso.

(a) a municipal corporation constituted under Bombay Act No VI. of 1873, or any other enactment for the time being in force, is a party to such suit, and an officer of Government is, in his official capacity, a member of such corporation, or

(b) an officer of a Court appointed under the Code of Civil Procedure, section 456,‡ last paragraph,§ is, in virtue of such appointment,§ a party to such suit.

* But see Act XVII of 1879, s. 5 (to be read with s. 1).

† S. 32 (except the proviso, which has been added hereto by s. 3 of Act XV. of 1880) has been substituted for the original by Act X. of 1876, s. 15.

‡ This reference to s. 456 of Act XIV. of 1882 should now be meant to apply to rules 3 (2), (3) and 4 (4) of Order XXXII. of Act V. of 1908 (the present Code) —See s. 158 of the latter Act.

§ In cl. (b) of the proviso to s. 32, certain words, repealed by Act XII. of 1891, have here been omitted.

appeals, receiving pleadings, execution of processes, return of writs, and the like, and shall be designated Assistant Judge or Subordinate Judge, as the case may be, in charge of the district, and shall continue in such charge until the office of District Judge may be resumed or assumed by an officer duly appointed thereto.

86. Any District Judge leaving the *sadr* station, and proceeding on duty to any place within his district, may delegate to an Assistant Judge, or, in the absence of an Assistant Judge, to a Subordinate Judge at the *sadr* station, the power of performing such of the duties enumerated in section 35 as may be emergent; and such officer shall be designated Assistant or Subordinate Judge, as the case may be, in charge of the *sadr* station.

87. In the event of the death, suspension, or temporary absence of any Subordinate Judge, the office of Subordinate Judge. District Judge may empower the Judge of any subordinate Court of the same district to perform the duties of the Judge of the vacated subordinate Court, either at the place of such Court or of his own Court; but in every such case the registers and records of the two Courts shall be kept distinct.

PART VIII.

MINISTERIAL OFFICERS.

88. All ministerial officers of the Civil Courts in each district shall be appointed, and may be fined, suspended, or dismissed, by the District Judge, subject to such rules as the High Court may, from time to time, prescribe.

Provided that the Judge of every subordinate Court may, subject to the like rules, appoint the ministerial officers of such Court, whose salaries do not exceed rupees ten per mensem, and may by order fine, suspend, or dismiss any ministerial officer of such Court who is guilty of any misconduct or neglect in the performance of the duties of his office.

Every such order shall be subject to appeal to the District Judge, and the rules for the time being applicable to appeals to the Court of Session from orders of the Criminal Courts subordinate thereto shall apply to all appeals under this section.

ACT XXIII. OF 1863

[The Waste Lands (Claims) Act, 1863].*

RECEIVED THE G.-G.'s ASSENT ON THE 10TH MARCH 1863.

An Act to provide for the Adjudication of Claims to Waste Lands.

WHEREAS it is expedient to make special provision for the speedy adjudication of claims which may be preferred to waste lands proposed to be sold or otherwise dealt with on account of Government, and of objections taken to the sale or other disposition of such lands; It is enacted as follows:—

* This is the short title given to the Act by the Indian Short Titles Act (XIV of 1897).

For Proceedings relating to the Bill, see *Calcutta Gazette*, 1863, Supplement, p. 109

Act XXIII of 1863 has been declared to be in force in—

(1) the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874):

(2) the Arakan Hill Districts, by the Arakan Hill Districts Laws Regulation (IX of 1874).

It has further been declared, by notification under s. 3 (a) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

(1) West Jalpaiguri (see *Gazette of India*, Mar. 5, 1881, Pt. I., p. 1):

(2) The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singbhum (see *Gazette of India*, 1881, Pt. I., p. 504):

(3) The Porahat Estate in the Singbhum District (see *Gazette of India*, 1807, Pt. I., p. 1059):

(4) Kumaon and Garhwal (see *Gazette of India*, 1876, Pt. I., p. 605):

(5) The scheduled portion of the Mirzapur District (see *Gazette of India*, 1897, Pt. I., p. 383):

(6) Jaunsar Bawar (see *Gazette of India*, 1879, Pt. I., p. 382):

(7) The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, and Dera Ghazi Khan (see *Gazette of India*, 1836, Pt. I., p. 43):

(8) The District of Lahaul (see *Gazette of India*, 1836, Pt. I., p. 301):

(9) The District of Silhat (see *Gazette of India*, 1879, Pt. I., p. 631):

2 000—14-10-1909.

Act XXIII., 1863—1.

The High Court may also permit the Civil Courts under its control to adjourn for a period or periods not exceeding in the whole six weeks in each year.

SCHEDULE :

ENACTMENTS REPEALED.

[*Repealed by Act XIV. of 1870.*]

1. When any claim shall be preferred to any waste-land proposed to be sold or otherwise dealt with on account of Government, or when any objection shall be taken to the sale or other disposition of such land, the Collector of the district in which such land is situate, or other officer performing the duties of a Collector of land-revenue in such district, by whatever name his office is designated, shall, if the claim or objection be preferred within the period mentioned in the advertisement to be issued for the sale or other disposition of such land, which period shall not be less than three months, proceed to make an enquiry into the claim or objection.

2. The Collector or other officer as aforesaid shall call upon the claimant or objector to produce any evidence or documents upon which he may rely in proof of his claim or objection; and, after considering the same, and making any further enquiry that may appear proper, shall dispose of the case by an order for the admission or rejection of the claim or objection; and, if the land is proposed to be sold, for the sale of the same subject to any condition or reservation which, to such Collector or other officer as aforesaid, shall appear to be proper.

If the land is ordered to be sold subject to any condition or reservation, such condition or reservation shall be notified to intending purchasers at the time of sale.

3. Pending an enquiry into any claim or objection under the last-preceding section, the Collector or other officer as aforesaid shall postpone the sale or other disposition of the land;

and, if he shall order that such claim or objection be rejected, he shall further postpone the sale or other disposition of the land to allow the claimant to contest rejection of claim.

(10) The Districts of Kamrup, Naugong, Darrang, Sibsagar, Lakhimpur, Goalpara (excluding the Eastern Dvars), and Kachar (excluding the North Kachar Hills) (*see Gazette of India*, 1878, Pt. I, p. 533).

It has been extended, by notification under s. 5 of the same Act, to the following Scheduled Districts:—

(1) The Western Dvars (*see Gazette of India*, 1875, Pt. I, p. 497):

(2) The North-Western Provinces Tarai (*see Gazette of India*, 1876, Pt. I, p. 505).

the claimant or objector to contest the order of rejection in the manner hereinafter provided.

4. If the Collector or other officer as aforesaid shall consider the claim or objection to be established, and that the sale or other disposition of the land should not take place, he shall stop the sale or other disposition of the land ;

but such sale or other disposition of the land may afterwards be proceeded with if, on an order issued by the Local Government to try the claim or objection as provided in section 6 of this Act, the claimant or objector shall fail to establish the same.

5. If the Collector or other officer as aforesaid shall order that the claim or objection be rejected, or that the land be sold subject to any condition or reservation, or that it be otherwise dealt with, he shall cause a copy of such order to be delivered to the claimant or objector ;

and, if such claimant or objector shall not, within one week from the delivery of such copy, or within such further time as the Collector or other officer as aforesaid, for any special reason to be recorded, shall see fit to grant, give notice in writing to such Collector or other officer as aforesaid that he intends to contest such order, the order shall be final.

If the claimant or objector shall, within the time allowed, give such notice, the Collector or other officer as aforesaid shall immediately make a report to the Board of Revenue or other superior revenue-authority, and shall forward with such report a copy of his order, stating fully all the circumstances of the case, and the evidence adduced in support or otherwise of the claim or objection ;

and such Board or other authority, on the receipt of such report, and after calling for any further information which it may consider necessary, may confirm, modify, or reverse the order of the Collector or other officer as aforesaid.

If the Board or other authority as aforesaid confirm the order of the Collector or other officer as aforesaid, or modify such order in such

Certification to Court.

Act III. of 1873. Provided that no increase to the number of such Courts shall be made by such Government without the previous sanction of the Governor-General in Council.

4. The number of Subordinate Judges and District Munsifs to be appointed under this Act for each district shall be fixed and may, from time to time, be altered, by the Local Government :

Provided that no addition to the number of such officers shall be made by such Government without the previous sanction of the Governor-General in Council.

5. The place at which any Court under this Act shall be held may be fixed and may, from time to time, be altered—

in the case of a District Court or a Subordinate Judge's Court—by the Local Government ;

in the case of a District Munsif's Court—by the High Court.

The places fixed for any Court under this section shall be deemed to be within the local jurisdiction of that Court.*

Appointment to vacancy in office of District Judge or Subordinate Judge.

6. Whenever the office of the Judge of a District Court (hereinafter called a "District Judge") or of a Subordinate Judge under this Act is vacant,

or whenever the Governor-General in Council has sanctioned an addition to the number of District Judges or Subordinate Judges under the provisions of section 3 or section 4,

the Local Government shall appoint to the office such duly-qualified person as it thinks proper.

Appointment to vacancy in office of District Munsif.

7. Whenever the office of a District Munsif under this Act is vacant,

* To s. 5, this paragraph has been added by Act XXI. of 1885, s. 2.

manner as to leave any part of such order in force adverse to the claimant or objector, the Collector or other officer as aforesaid shall certify such order to the Court constituted as hereinafter provided;

Notice to claimant. and such Court shall forthwith give notice to the claimant or objector;

and if such claimant or objector shall not . . . * institute a suit in such Court to establish his claim or objection, the order of the Board or other authority aforesaid shall be final.

6. The Local Government may, within twelve months after the date on which the claim of any claimant of waste-land, or the objection of any objector as aforesaid, shall have been admitted under this Act by the Collector or other officer as aforesaid, direct a suit to be brought to try the claim or objection of the claimant or objector in a Court constituted as hereinafter provided.

7. For the investigation and trial of claims under this Act, the Local Government shall constitute, in every district in which there may be any waste lands capable of being sold or otherwise dealt with on account of Government, a Court consisting of an uneven number of persons, not less than three, of whom the Judge of the district or the officer presiding in the principal Civil Court of original jurisdiction in the district, by whatever name his office may be designated, shall be one.

Any one or more of the members of which such Court shall consist shall have power to make all such orders in the case as may be necessary prior to the hearing of the suit.

Provided that, whenever the Collector or other officer by whom the original enquiry was held is the officer presiding in the principal Civil Court of original jurisdiction in the district, such officer shall not be a member of such Court.

* In s 5 the words, "within thirty days from the delivery of such notice from the Court," have here been repealed by the Indian Limitation Act (IX. of 1871). For limitation, see now the new Indian Limitation Act (IX. of 1908), First Schedule, No. 1.

Act-III. of 1873. The present local limits [of the jurisdiction of every Civil Court (other than the High Court)] shall be deemed to have been fixed under this Act.

Local jurisdiction of District Munsifs **11** The High Court shall fix, and may, from time to time, modify, the local jurisdiction of District Munsifs.

If the High Court assigns the same local jurisdiction to two or more District Munsifs, it shall declare which of them shall be deemed the Principal District Munsif, and the other or others shall be called Additional District Munsifs, and shall take cognizance only of such suits and applications as may, by special or general order in this behalf, be directed by the District Judge.

12 The jurisdiction of a District Judge or a Subordinate Judge extends, subject to the rules contained in the Code of Civil Procedure,† to all original suits and proceedings of a civil nature.

Jurisdiction of District Judge or Subordinate Judge in original suits The jurisdiction of a District Munsif extends to all like suits and proceedings, not otherwise exempted from his cognizance, of which the amount or value of the subject-matter does not exceed two thousand five hundred rupees.

13. Regular or special appeals or appeals under Madras Regulation XI. of 1832,‡ section 9, shall, when such appeals are allowed by law, lie from the decrees and orders of a District Court to the High Court.

Appellate jurisdiction of District Court Appeals from the decrees and orders of Subordinate Judges and District Munsifs shall, when such appeals are allowed by law, lie to the District Court, except when the amount or value of

* To s 11, this paragraph has been added by Act XXI of 1885, s 3

† Now Act XIV of 1882.

‡ Repealed by Act VI. of 1878.

28. When the judgment-debtor under any decree of the Small Cause Court is a tenant of immoveable

Things attached to immoveable property and removeable by tenant to be deemed moveable in execution.

property, anything attached to such property, and which he might, before the termination of his tenancy, lawfully remove without the permission of his landlord, shall, for the purpose of the execution of such decree, "and for the purpose of deciding all questions arising in the execution of such decree," * be deemed to be moveable property, and may, if sold in such execution, be severed by the purchaser, but shall not be removed by him from the property until he has done to the property whatever the judgment-debtor would have been bound to do to it if he had removed such thing.

29. Whenever any judgment-debtor, who has been arrested,

Discharge of judgment-debtor on sufficient security. or whose property has been seized in execution of a decree of the Small Cause Court, offers security to the satisfaction of such Court for payment of the amount which he has been ordered to pay and the costs, the Court may order him to be discharged, or the property to be released.

30. Whenever it appears to the Small Cause Court that any

Court may in certain cases judgment-debtor under its decree is unable, from sickness, poverty, or other sufficient cause, to pay the amount of the decree, or, if such Court has ordered the same to be paid in instalments, the amount of any instalment thereof, it may, from time to time, for such time, and upon such terms as it thinks fit, suspend the execution of such decree, and discharge the debtor or make such order as it thinks fit.

31. If the judgment-debtor under any decree of the Small

Execution of decree of Small Cause Court has not, within the local Cause Court by other Courts. limits of its jurisdiction, moveable property sufficient to satisfy the decree, the Court may, on the application of the decree-holder, send the decree for execution,—

(a) in the case of execution against immoveable property situate within such local limits—"to the Madras City Civil Court or the High Court of Judicature at Fort William or Bombay, as the case may be ;" †

* The words quoted have been inserted by the Presidency Small Cause Courts Act (IV of 1906), s 2

† In cl. (a) of s. 31, the words quoted have been substituted for the words, "to the High Court," by the Madras City Civil Courts Act (VII. of 1892), s 12.

Act III.
1878.

(a) the Muhammadan law in cases where the parties are Muhammadans, and the Hindu law in cases where the parties are Hindus, or

(b) any custom (if such there be) having the force of law, and governing the parties or property concerned,

shall form the rule of decision, unless such law or custom has, by legislative enactment, been altered or abolished.

(c) In cases where no specific rule exists, the Court shall act according to justice, equity, and good conscience.

17. No District Judge, Subordinate Judge, or District Munsif shall try any suit to or in which he is a party or personally interested, or shall adjudicate upon any proceeding connected with, or arising out of, such suit.

No District Judge or Subordinate Judge shall try any appeal against a decree or order passed by himself in another capacity.

When any such suit, proceeding, or appeal comes before any such officer, he shall report the circumstances to the Court to which he is immediately subordinate.

The superior Court shall thereupon dispose of the case in the manner prescribed by the Code of Civil Procedure, section 6.*

Nothing in the last-preceding clause of this section shall be deemed to affect the extraordinary original civil jurisdiction of the High Court.

PART IV.— MISCONDUCT OF JUDGES.

18. Any District Judge, Subordinate Judge, or District Munsif may, for any misconduct, be suspended or removed by the Local Government.

* Now see s. 25 of Act XIV of 1882.—See s. 3 of that Act.

35. The Registrar may receive applications for the execution of decrees of any value passed by the Registrar may execute all decrees with the same powers as a Judge. Court, and may commit and discharge judgment-debtors, and make any order in respect thereof which a Judge of the Court might make under this Act.

36. Every decree and order made by the Registrar in any Decrees and orders of Registrar to be subject to new trial as if made by a Judge. suit or proceeding shall be subject to the same provisions in regard to new trial as if made by a Judge of the Court.

CHAPTER VI.*

NEW TRIALS AND APPEALS.

37. Save as otherwise provided by this chapter, or by any General finality of decrees and orders of Small Cause Court. other enactment for the time being in force, every decree and order of the Small Cause Court in a suit shall be final and conclusive.

38. Where a suit has been contested, the Small Cause Court New trial of contested cases. may, on the application of either party, made within eight days from the date of the decree or order in the suit (not being a decree passed under section 522 of the Code of Civil Procedure†), order a new trial to be held, or alter, set aside, or reverse the decree or order, upon such terms as it thinks reasonable, and may, in the meantime, stay the proceedings.

Explanation.—Every suit shall be deemed to be contested in which the decree is made otherwise than by consent of, or in default of appearance by, the defendant.

39 (1) In any suit instituted in a Small Cause Court in Removal of certain causes into High Court. which the amount or value of the subject-matter exceeds the sum of one thousand rupees, the defendant or any one of the defendants may, before the day fixed by the summons for the appearance of the defendant, or within eight days after the service of the summons

* Ch. VI has been substituted for the one originally enacted by the Presidency Small Cause Courts Act (I of 1895), s 13.

† Act XIV. of 1882.—See now the new Code (Act V. of 1908).

Act III.
of 1873

PART V.—MINISTERIAL OFFICERS

22 The ministerial officers of the District Courts shall be appointed, and may be suspended or removed, by the Judges of such Courts, whose orders in such matters shall, subject to the control of the High Court, be final.

23.† The ministerial officers of the Courts of the Subordinate Judges and District Munsifs shall be appointed by such Subordinate Judges and District Munsifs, respectively subject to the approval or confirmation of the District Judge within whose jurisdiction such Courts are situate, and may, "subject to the control of the High Court," be suspended or removed from office either by the said District Judge or (subject to his approval or confirmation) by such Subordinate Judges and District Munsifs, respectively.

24 Every appointment under this Part shall be made subject to such rules as the Local Government, from time to time, prescribes on this behalf

Every person appointed under this Part shall perform such duties as may, from time to time, be imposed upon him by the presiding officer of the Court to which he belongs

The present ministerial officers of the Courts under this Act shall be deemed to have been appointed under this Part

24A‡ The Local Government may, at the instance of the District Judge, transfer from any Court, except the High Court, to any other Court, except the High Court, all or any of the ministerial officers of the Court of such Judge, or of any Subordinate Judge or District Munsif under his control

* See Act XXI. of 1885, s. 4.

† See Act XIX. of 1877, s. 2

‡ See Act XIX. of 1877, s. 3

according to the practice of the High Court, are payable to the Government.

CHAPTER VII.

RECOVERY OF POSSESSION OF IMMOVEABLE PROPERTY.

41. When any person has had possession of any immoveable property situate within the local limits of the Small Cause Court's jurisdiction, and of which the annual value at a rack-rent does not exceed one thousand rupees, as the tenant, or by permission of another person, or of some person through whom such other person claims,

and such tenancy or permission has determined or been withdrawn,

and such tenant or occupier or any person holding under, or by assignment from him (hereinafter called the occupant), refuses to deliver up such property in compliance with a request made to him in this behalf by such other person,

such other person (hereinafter called the applicant) may apply* to the Small Cause Court for a summons against the occupant calling upon him to show cause, on a day therein appointed, why he should not be compelled to deliver up the property.

42. The summons shall be served on the occupant in the manner provided by the Code of Civil Procedure† for the service of a summons on a defendant.

43. If the occupant does not appear at the time appointed, and show cause to the contrary, the applicant shall, if the Small Cause Court is satisfied that he is entitled to apply under section 41, be entitled to an order addressed to a bailiff of the Court directing him to give possession of the property to the applicant on such day as the Court thinks fit to name in such order.

* For fee on such applications, see s. 71, *infra*.

† See Act XIV. of 1882, ss. 72 to 92 — But see now the new Code (Act V. of 1908), and the provisions thereof corresponding to those of ss. 72-92 of the Code of 1882.

Act III. of 1873. any "District or"* Subordinate Judge with the jurisdiction of a Judge of a Court of Small Causes for the trial of suits cognizable by such Courts up to the amount of rupees five hundred,

and any District Munsif with the same jurisdiction up to the amount of rupees fifty, "or, Investiture of District Munsif with similar jurisdiction. on the recommendation of the High Court, up to any amount not exceeding rupees two hundred,"*

and may, by like notification, whenever it thinks fit, withdraw such jurisdiction from the "District or"* Subordinate Judge or Munsif so invested.

29 [*Amendment of Act XI. of 1865, s. 51.*] *Repealed by Act IX of 1887*

Sections 1, 8, 9, 10, and 12 of Madras Act No. I. of 1868 (*for the appointment of a Commissioner for the administration of civil and criminal justice, and for the superintendence and collection of the revenues on the Nilgiri Hills*) shall be read as if, for the words 'Civil' and 'Zila,' used therein with reference to a Civil or Zila Judge or Court, the word 'District' was substituted, and as if, for the words 'Principal-Sadr Amin,' the words 'Subordinate Judge' were substituted.†

But, save as provided in this section; nothing herein contained shall be deemed to affect the said Madras Act. †

30 The High Court may permit the Civil Courts under its control to adjourn, from time to time, for periods not exceeding in the aggregate two months in each year.

* See Act XXI. of 1885, s. 5

† The second and third paragraphs of s. 29 have been rendered inoperative by the repeal of Mad Act I of 1868 by Mad Act II. of 1881, but they have not yet been formally removed from the Statute-book.

And when the applicant was not, at the time of applying for Application for order in any such order as aforesaid, entitled to such case an act of trespass. the possession of such property, the application for such order, though no possession is taken thereunder, shall be deemed to be an act of trespass committed by the applicant against the occupant.

47. Whenever, on an application being made under section Stay of proceedings on 41, the occupant binds himself with occupant giving security to two sureties, in a bond for such amount bring suit against applicant. as the Small Cause Court thinks reasonable having regard to the value of the property and the probable costs of the suit next hereinafter mentioned, to institute, without delay, a suit in the High Court against the applicant for compensation for trespass, and to pay all the costs of such suit in case he does not prosecute the same, or in case judgment therein is given for the applicant, the Small Cause Court shall stay the proceedings on such application until such suit is disposed of.

If the occupant obtains a decree in any such suit against the applicant, such decree shall supersede the order (if any) made under section 43.

Nothing contained in section 22 shall apply to suits under this section.

48 In all proceedings under this chapter, the, Small Cause Court shall, as far as may be, and except as herein otherwise provided, follow the procedure prescribed for a Court of first instance by the Code of Civil Procedure *

49. Recovery of the possession of any immoveable property under this chapter shall be no bar to the institution of a suit in the High Court for trying the title thereto.

CHAPTER VIII.

DISTRESSES.

50. This chapter extends to every place within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Fort William, Madras, and Bombay.

* Act XIV of 1882 — See now the new Code (Act V. of 1908), superseding the Code of 1882.

SECTIONS.

23. Power to reduce capital by cancellation of unissued shares.

Sub-division of Shares

- 24 Shares may be divided into shares of smaller amount.
25. Special resolution to be embodied in memorandum of association.

Associations not for Profit

- 26 Special provisions as to associations formed for purposes not of gain.

Calls upon Shares.

27. Company may have some shares fully paid, and others not
28. Manner in which shares are to be issued and held

Transfer of Shares.

29. Transfer may be registered at request of transferor.
Share-warrants to bearer
30 Warrant of limited shares fully paid up may be issued in name of bearer.

Coupons

31. Effect of share-warrant
32. Re-registration of bearer of a share-warrant in the register
33 Regulations of the Company may make the bearer of a share-warrant a member
34. Entries in register where share-warrant issued.
35. [Stamps on share warrants, &c.] Repealed by the Indian Stamp Act (II. of 1899).

Change of Name

36. Power of Companies to change name.

Articles of Association.

37. Regulations to be prescribed by articles of association.

SECTIONS.

38. Application of Table A.
39. Signature and effect of articles of association.

General Provisions

40. Registration of memorandum of association and articles of association with fees as in Tables B and C.
41. Effect of registration. *para*
42 Copies of memorandum and articles to be given to members.
43 Prohibition against identity of names in Companies

PART II.

DISTRIBUTION OF CAPITAL AND LIABILITY OF MEMBERS OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Distribution of Capital.

- 44 Nature of interest in Company.
45 Definition of "member"
46 Transfer by personal representative
47. Register of members.
48. Annual list of members.
49 Particulars to be contained in annual summary.
50. Penalty on Company, &c., not keeping a proper register
51 Company to give notice of consolidation or of conversion of capital into stock
52. Effect of conversion of shares into stock
53 Entry of trusts on register
54. Certificate of shares or stock
55 Inspection of register
56. Power to close register
57 Notice of increase of capital and of members to be given to Registrar.
58. Remedy for improper entry or omission of entry in register.

the outer door of which may be open, and may break open the door of any room in such dwelling-house for the purpose of seizing property liable to be seized under this chapter :

Provided that he shall not enter or break open the door of any room appropriated for the *zanana* or residence of women, which, by the usage of the country, is considered private.

57. In pursuance of the warrant aforesaid, the bailiff shall seize the moveable property found in or upon the house or premises mentioned in the warrant, and belonging to the person from whom the rent is claimed (hereinafter called the debtor), or such part thereof as may, in the bailiff's judgment, be sufficient to cover the amount of the said rent, together with the costs of the said distress :

Provided that the bailiff shall not seize—

(a) things in actual use ; or

(b) tools and implements not in use, where there is other moveable property in or upon the house or premises sufficient to cover such amount and costs ; or

(c) the debtor's necessary wearing apparel ; or

(d) goods in the custody of the law.

58. The bailiff may impound or otherwise secure the property so seized in or on the house or premises chargeable with the rent.

Impounding distress.

59. On seizing any property under section 57, the bailiff shall make an inventory of such property, and shall give a notice in writing, to the effect of the Form (marked C) in the Third Schedule hereto annexed, to the debtor, or to any other person upon his behalf in or upon the said house or premises.

Inventory.

Notice of intended appraisal and sale.

The bailiff shall, as soon as may be, file in the Small Cause Court copies of the said inventory and notice.

Copies of inventory and notice to be filed.

60. The debtor, or any other person alleging himself to be the owner of any property seized under this chapter, or the duly-constituted attorney of such debtor or other person, may, at any time within five days from such seizure, apply to any Judge of the said Court to discharge or suspend the warrant, or to release a distrained ar-

Application to discharge or suspend warrant.

SECTIONS.

Arbitrations.

- 96. Power for Companies to refer matters to arbitration
- 97. Power to alter or revoke agreements for reference
- 98. Agreements to be carried into effect.
- 99. Reference to arbitrator
- 100. Reference to two or more arbitrators.
- 101. Appointment of arbitrators by Companies
- 102. Appointment of arbitrators by Local Government
- 103. Appointment of arbitrators by Companies to supply vacancies.
- 104. Appointment of arbitrators by Local Government to supply vacancies.
- 105. Appointment of arbitrator not revocable.
- 106. Appointment of umpire by arbitrators
- 107. Appointment of umpire by Local Government
- 108. Appointment of umpire by arbitrators to supply vacancy.
- 109. Appointment of umpire by Local Government to supply vacancy.
- 110. Succeeding arbitrators and umpires to have powers of predecessors.
- 111. Reference to umpire
- 112. Power for arbitrators, &c., to call for books, &c., and examine witnesses on oath
- 113. Procedure in the arbitration.
- 114. Arbitration may proceed in absence of Companies.
- 115. Several awards may be made
- 116. Awards made in due time to bind all parties
- 117. Power for umpire to extend period for making his award.
- 118. Awards not to be set aside for informality.
- 119. Awards to be obeyed.

SECTIONS.

- 120. Agreements, arbitrations, and awards to have effect.
- 121. Costs of arbitration and award.
- 122. Payment of costs
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PART IV.

WINDING-UP OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Preliminary.

- 124. Meaning of "contributory."
- 125. Nature of liability of contributory
- 126. Contributories in case of death.
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Winding-up by Court.

- 128. Circumstances under which Company may be wound up by Court.
- 129. Company when deemed unable to pay its debts
- 130. Definition of "the Court" Definition of "debts."
- 131. Application for winding-up to be made by petition
- 132. Contributory when not qualified to present winding-up petition.
- 133. Commencement of winding-up by Court.
- 134. Court may grant injunction.
- 135. Course to be pursued by Court on hearing petition
- 136. Suits to be stayed after order for winding-up
- 137. Copy of order to be forwarded to Registrar.
- 138. Power of Court to stay proceedings
- 139. Effect of order on share-capital of Company Limited by guarantee
- 140. Court may have regard to wishes of creditors or contributories

63. In any case under section 60 or section 61, if the value of the subject-matter in dispute exceeds one thousand rupees, the applicant or claimant may apply to the High Court to transfer the case to itself, and the High Court, on being satisfied that it is expedient that the case should be disposed of by itself, may direct the case to be transferred accordingly, and may thereupon alter or set aside any order passed in the case by a Judge of the Small Cause Court, and may make such order therein as the High Court thinks fit.

Every application under this section shall be made within seven days from the date of the seizure of the subject-matter in dispute.

In granting applications under this section, the High Court may impose such terms as to payment of, or giving security for, costs or otherwise as it thinks fit.

The procedure in cases transferred under this section shall conform, as far as may be, to the procedure in suits before the High Court in the exercise of its ordinary original civil jurisdiction; and orders made under this section may be executed as if they were made in the exercise of such jurisdiction; and every such order awarding or refusing compensation shall bar any suit for the recovery of compensation for any damage caused by the distress which gave rise to the case wherein such order was made.

64. In default of any order to the contrary by a Judge of a Small Cause Court, or by the High Court, any two of the said bailiffs may, at the expiration of five days from a seizure of property under this chapter, appraise the property so seized, and give the debtor notice in writing to the effect of the Form (marked D) in the Third Schedule hereto annexed.

Appraisement.

Notice of sale.

The bailiffs shall file in the Small Cause Court a copy of every notice given under this section.

65. In default of any such order to the contrary, the distrained property shall be sold on the day mentioned in such notice, and the said bailiffs shall, on realizing the proceeds, pay over the amount thereof to the Registrar of the Small Cause Court; and such amount shall be applied first in payment of the costs of the said distress, and then in

Sale.

Application of proceeds.

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- 186. Liquidators on conclusion of winding-up to make up an account.
- 187. Liquidators to report meeting to Registrar
- 188. Costs of voluntary liquidation.
- 189. Saving of rights of creditors.
- 190. Power of Court to adopt proceedings of voluntary winding-up

Winding-up subject to the Supervision of the Court.

- 191. Power of Court on application to direct winding-up subject to supervision
- 192. Petition for winding-up subject to supervision
- 193. Court may have regard to wishes of creditors.
- 194. Power to Court to appoint additional liquidator in winding-up subject to supervision.
- 195. Effect of order of Court for winding-up subject to supervision
- 196. Appointment in certain cases of voluntary liquidators to office of official liquidators.

Supplemental Provisions.

- 197. Dispositions after commencement of winding-up avoided
- 198. Books of Company to be evidence
- 199. Disposal of books, accounts, and documents of Company
- 200. Inspection of books.
- 200A. Priority of debts.
- 201. General scheme of liquidation may be sanctioned
- 202. Power to compromise
- 203. Where compromise proposed, Court may order a meeting of creditors, &c, to decide as to such compromise
- 204. Power for liquidators to accept shares, &c, as a consideration for sale of property of Company.

SECTIONS

- 205. Mode of determining price.
- 206. Appointment of arbitrator when questions are to be determined by arbitration
- 207. Vacancy of arbitrator to be supplied.
- 208. Appointment of umpire.
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CHAPTER IX.

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69.* (1) If two or more Judges of the Small Cause Court sit together in any suit, or in any proceeding under Chapter VII. of this Act, and differ in their opinion as to any question of law or usage having the force of law or the construction of a document, which construction may affect the merits, or

if, in any suit or any such proceeding in which the amount or value of the subject-matter exceeds five hundred rupees, any such question arises upon which the Court entertains reasonable doubt, and either party so requires,

the Small Cause Court shall draw up a statement of the facts of the case and the point on which there is a difference of opinion, or on which doubt is entertained, and refer such statement with its own opinion on the point for the opinion of the High Court; and the provisions of sections 619 to 621 of the Code of Civil Procedure† shall, so far as they are applicable, be deemed to apply as if such reference had been made under section 617 of the said Code.

(2) When the Small Cause Court refers any question for the opinion of the High Court as provided in sub-section (1), it shall either reserve judgment or give judgment contingent upon such opinion.

70. When judgment is given under section 69 contingent upon the opinion of the High Court, the party against whom such judgment is given shall at once furnish security, to be approved by the Small Cause Court for the costs of the reference to the High Court, and for the amount of such judgment :

Provided that no security for the amount of such judgment shall be required in any case in which the Judge who tried the case has ordered such amount to be paid into Court, and the same has been paid accordingly.

* S 69 has been substituted for the original section by the Presidency Small Cause Courts Act (IV. of 1906), s. 4.

† These references to Act XIV. of 1882 shall now be taken to be made to Act V. of 1908.—See section 158 of Act V. of 1908.

74. The Small Cause Court may, whenever it thinks fit, receive Fees and costs of poor and register suits instituted, and applications under section 41 made, by poor persons, and may issue processes on behalf of such persons, without payment, or on a part-payment, of the fees mentioned in sections 71 and 72.

75. The Local Government may, from time to time, by notification* in the official Gazette, vary the amount of the fees payable under sections 71 and 72.
Power to vary fees.

Provided that the amount of such fees shall in no case exceed the amount prescribed by the said sections.

76. The expense of employing an advocate, vakil, attorney, or other legal practitioner, incurred by any party, shall not be allowed as costs in any suit, or in any proceeding under Chapter VII. of this Act, in the Small Cause Court, in which suit or proceeding the amount or value of the subject-matter does not exceed twenty rupees, unless the Court is of opinion that the employment of such practitioner was under the circumstances reasonable.

77. Nothing contained in this chapter shall affect the provisions of sections 3, 5, and 25 of the Court Fees Act, 1870,† saved.
Sections 3, 5, and 25 of Court Fees Act, 1870,†

CHAPTER XI.

MISCONDUCT OF INFERIOR MINISTERIAL OFFICERS.

78. The Chief Judge may, by order, fine, in an amount not exceeding one month's salary, any clerk, bailiff, or other inferior ministerial officer of the Court who is guilty of misconduct or neglect in the performance of the duties of his office; and such fine may be deducted from his salary.
Power to fine officers.

* For instances of such notifications in—

Bombay—see Bombay List of Local Rules and Orders,
Vol. I., Ed. 1896, pp. 422 and 423,

Madras—see Madras List of Local Rules and Orders,
Vol. I., Ed. 1898, pp. 204 and 205

† Act VII of 1870.

2. On and from the commencement of this Act, the Indian Companies Act, 1866,* shall be repealed. But such repeal shall not affect—

- (a) the incorporation of any Company registered under the said Act or any Act thereby repealed ;
- (b) any right or privilege acquired, or liability incurred, under the said Act or any Act thereby repealed ;
- (c) Table B† in the Schedule annexed to Act No. XIX of 1857‡ or any part thereof so far as the same applies to any Company existing at the time of the commencement of this Act.

And all references to the said Indian Companies Act, 1866,* in Acts or Regulations passed before the commencement of this Act, shall be read as if made to this Act ; and all rules made, fees directed, resolutions passed, and other things duly done, under the same Act, shall be deemed to be respectively made, directed, passed, and done under this Act ; and all Companies under the same Act shall be deemed to be Companies under this Act.

Interpretation-clause—

3. In this Act, unless there be something repugnant in the subject or context—

“ Insurance Company ” means a Company that carries on the business of insurance, either solely, or in common with any other business or businesses ;

“ Court ” means the principal Civil Court of original jurisdiction in a district, and includes the High Court in the exercise of its ordinary original civil jurisdiction ;

“ District Court ” means the principal Civil Court of original jurisdiction in a district, but does not include the High Court in the exercise of its ordinary original civil jurisdiction.

* Act X of 1866 (*Repealed by s 2 of this Act.*)

† Printed in Appendix I., *infra*.

‡ Act XIX. of 1857 was repealed by Act X. of 1866, s 219.

offender to be detained in custody; and, at any time before the rising of the Court on the same day, may, if it thinks fit, take cognisance of the offence, and punish the offender with fine which may extend to two hundred rupees, and, in default of payment of such fine, with imprisonment in the civil jail for a term which may extend to one month, unless such fine is sooner paid.

84. In every such case the Court shall record the facts constituting the offence, the statement (if any) made by the offender, and the finding and sentence.

Record in such cases.

If the offence is under section 228 of the Indian Penal Code,* the record must show the nature and stage of the judicial proceeding in which the Court, when interrupted or insulted, was sitting, and the nature of the interruption or insult offered.

85 If the Court considers that a person accused of any offence referred to in section 83, and committed in its view or presence, should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, or if the Court is, for any other reason, of opinion that the case should not be disposed of under section 83, the Court, after recording the facts constituting the offence and the statement of the accused as hereinbefore provided, may forward the case to a Presidency Magistrate, and may require security to be given for the appearance of such accused person before such Magistrate, or if sufficient security is not given, may forward him under custody to such Magistrate.

Procedure where Court considers that case should not be dealt with under section 83.

Such Magistrate shall deal with the accused person in the manner provided by the Code of Criminal Procedure,† and may sentence the offender to punishment as provided in the section of the Indian Penal Code‡ under which he is charged

86. When the Court has, under section 83 or section 85, punished an offender, or forwarded him to a Presidency Magistrate for trial, for refusing or omitting to do anything which he was lawfully required to do, or for any intentional insult or interruption, the Court may, in its discretion, discharge the offender, or remit the punishment on

Discharge of offender on submission or apology.

* Act XLV. of 1860.

† See now Act V. of 1898, Ch. XXXV. and s. 3 (1).

The ninth Part—to miscellaneous provisions.

PART I.

CONSTITUTION AND INCORPORATION OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Memorandum of Association.

6. Any seven or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association, and otherwise complying with the requisitions of this Act in respect of registration, form an incorporated Company, with or without limited liability.

Explanation.—Foreigners are persons within the meaning of this section, although the whole or any part of the business of the proposed Company is intended to be transacted out of British India.

7. The liability of the members of a Company formed under this Act may, according to the memorandum of association, be limited either to the amount, if any, unpaid on the shares respectively held by them, or to such amount as the members may respectively undertake by the memorandum of association to contribute to the assets of the Company in the event of its being wound up.

* Where a Company is formed as a limited Company, the liability of the directors or managers of such Company, or of the managing director, may, if so provided by the memorandum of association, be unlimited.

8. Where a Company is formed on the principle of having the liability of its members limited to the amount unpaid on their shares, hereinafter referred to as a Company limited by shares, the memorandum of association shall contain the following things (that is to say):—

* Cf. s 4 of the Companies Act, 1867 (Stat. 30 & 31 Vict. c. 131).

ments in such form and manner as such Government or Court, as the case may be, thinks fit.

92. The Small Cause Court shall, at the commencement of each year, draw up a list of holidays and vacations to be observed in the Court, and shall submit the same for the approval of the Local Government.

Such list, when it has received such approval, shall be published in the local official Gazette, and the said holidays and vacations shall be observed accordingly.

93. The Governor-General and Members of his Council, the Certain persons exempt from arrest by Court. Governors of Fort St. George and Bombay, and the Members of their respective Councils, the Lieutenant-Governor of Bengal, and the Chief Justices and Judges of the High Courts established under the twenty-fourth and twenty-fifth of Victoria, Chapter 104,* shall not be liable to arrest by order of the Small Cause Court.

No suit to lie upon decree of Court.

94. No suit shall lie on any decree of the Small Cause Court.

95 Any person ordered by the Small Cause Court to be imprisoned may be imprisoned in such place as the Local Government, from time to time, appoints in this behalf.

96. If any person against whom any suit is brought for anything purporting to be done by him under this Act has, before the institution of the suit, tendered sufficient amends to the plaintiff, the plaintiff shall not recover.

97. All prosecutions for anything purporting to be done under this Act must be commenced within three months after the offence was committed.

* The Indian High Courts Act, 1861.

10. Where a Company is formed on the principle of having no limit placed on the liability of its members (hereinafter referred to as an unlimited Company), the memorandum of association shall contain the following things (that is to say):—

- (a) the name of the proposed Company;
- (b) the part of British India in which the registered office of the Company is proposed to be situate;
- (c) the objects for which the proposed Company is to be established.

11. The memorandum of association shall be signed by each Signature and effect of subscriber in the presence of, and be memorandum of association. attested by, one witness at the least. It shall, when registered, bind the Company and the members thereof to the same extent as if each member had subscribed his name thereto, and there were in the memorandum contained, on the part of himself, his heirs, executors, and administrators, a contract to observe all the conditions of such memorandum subject to the provisions of this Act.

12. Any Company limited by shares may so far modify the conditions contained in its memorandum of association if authorized to do so by its regulations as originally framed, or as altered by special resolution in manner hereinafter mentioned, as to increase its capital, by the issue of new shares of such amount as it thinks expedient, or to consolidate and divide its capital into shares of larger amount than its existing shares, or to convert its paid-up shares into stock; but, save as aforesaid, and save as hereinafter provided, no alteration shall be made by any Company in the conditions contained in its memorandum of association.

*Reduction of Capital and Shares.**

13. Any Company limited by shares may, by special resolution, so far modify the conditions contained in its memorandum of association, if authorized so to do by its regulations as originally framed, or as altered by special resolution, as to reduce its capital, but no such

* Cf. ss. 9 to 19 of the Companies Act, 1867 (Stat. 30 & 31 Vict. c. 131).

THE FIRST SCHEDULE—(*continued*).(*See section 2.*)ENACTMENTS REPEALED—(*continued*).*C.—Act of the Governor of Bombay in Council.*

Number and year.	Subject.	Extent of repeal.
VI. of 1864 ...	For the better regulation of the diet-money of persons imprisoned by the Bombay Court of Small Causes.	So much as has not been repealed.

to add, and the Court may, if it thinks fit so to do, dispense with the addition of, the words "and reduced" as mentioned in section 14.

* In any case that the Court thinks fit so to do, it may require the Company to publish, in such manner as the Court thinks fit, the reasons for the reduction or such other information regarding the same as the Court may think expedient with a view to give proper information to the public in relation to such reduction, and, if the Court thinks fit, the cause which led thereto.

16. Where a Company proposes to reduce its capital, every creditor of the Company, who, at the date fixed by the Court, is entitled to any debt or claim which, if that date were the commencement of the winding-up of the Company, would be admissible in proof against the Company, shall be entitled to object to the proposed reduction, and to be entered in the list of creditors who are so entitled to object.

The Court shall settle a list of such creditors, and, for that purpose, shall ascertain, as far as possible, without requiring an application from any creditor, the names of such creditors and the nature and amount of their debts or claims, and may publish notices fixing a certain day or days within which creditors of the Company, who are not entered on the list, are to claim to be so entered, or to be excluded from the right of objecting to the proposed reduction:

* Provided that, when the reduction does not involve either the diminution of any liability in respect of unpaid capital, or the payment to any shareholder of any paid-up capital, the creditors of the Company shall not, unless the Court otherwise directs, be entitled to object, or required to consent, to the reduction.

17. When a creditor, whose name is entered on the list of creditors, and whose debt or claim is not discharged or determined, does not consent to the proposed reduction the Court may (if it thinks fit) dispense with such consent on the Company securing the payment of the debt or claim of such creditor by setting apart and appropriating, in such manner as the Court

* Cf. s. 4 of the Companies Act, 1877 (Stat. 40 & 41 Vict. c. 26).

THE THIRD SCHEDULE—(continued).

FORMS—(continued).

C.

(See section 59.)

In the Small Cause Court for

FORM OF INVENTORY AND NOTICE.

(State particulars of property seized.)

Take notice that I have this day seized the moveable property contained in the above inventory for the sum of Rs. being the amount of morth's rent due to *A. B* at last, and that, unless you pay the amount thereof, together with the costs of this distress, within five days from the date hereof, or obtain an order from one of the Judges or the Registrar of the Small Cause Court to the contrary, the same will be appraised and sold pursuant to the provisions of Chapter VIII. of the Presidency Small Cause Courts Act, 1882. Dated the day of 18 .

(Signed) *E. F.*,*Bailiff and Appraiser.*To *C. D.*

D.

(See section 64.)

In the Small Cause Court for

Take notice that we have appraised the moveable property seized on the day of , under the provisions of Chapter VIII. of the Presidency Small Cause Courts Act, 1882, of which seizure and property a notice and inventory were duly served upon you [or upon on your behalf, *as the case may be*] under date the , and that the said property will be sold on the [two clear days at least after the date of the notice] at pursuant to the provisions of the said Act. Dated this day of 18 .

(Signed) *E. F.*,*G. H.*,*Bailiffs and Appraisers*To *C. D.*

19. The minute, when registered, shall be deemed to be

Minute to form part of substituted for the corresponding part memorandum of association. of the memorandum of association of the Company, and shall be of the same validity, and subject to the same alterations, as if it had been originally contained in the memorandum of association; and, subject as in this Act mentioned, no member of the Company, whether past or present, shall be liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount which has been paid on such share and the amount of the share as fixed by the minute.

20. If any creditor, who is entitled, in respect of any debt or

Saving of rights of creditors who are ignorant of proceedings. claim, to object to the reduction of the capital of a Company under this Act, is, in consequence of his ignorance of the

proceedings taken with a view to such reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and after such reduction the Company is unable, within the meaning of this Act, to pay to the creditor the amount of such debt or claim, every person, who was a member of the Company at the date of the registration of the order and minute relating to the reduction of its capital, shall be liable to contribute for the payment of such debt or claim an amount not exceeding the amount which he would have been liable to contribute if the Company had commenced to be wound up on the day prior to such registration, and, on the Company being wound up, the Court, on the application of such creditor, and on proof that he was ignorant of the proceedings taken with a view to the reduction, or of their nature and effect with respect to his claim, may, if it thinks fit, settle a list of such contributories accordingly, and make and enforce calls and orders on the contributories settled on such list in the same manner, in all respects, as if they were ordinary contributories in a winding-up.

Nothing in this section shall affect the rights of the contributories of the Company among themselves.

21. A minute, when registered, shall be embodied in every

Registered minute to be embodied in memorandum of association. copy of the memorandum of association issued after its registration; and, if any Company makes default in complying

with the provisions of this section, it shall incur a penalty, not exceeding ten rupees, for each copy in respect of which such default is made; and every director and manager of the Company,

THE FOURTH SCHEDULE.

(See section 72.)

FEES FOR SUMMONSES AND OTHER PROCESSES.

When the amount or value of the subject- matter exceeds	But does not exceed	Fee for sum- monses.	Fee for other processes.
Rs.	Rs.	Rs. A. P.	Rs. A. P.
0	10	0 2 0	0 2 0
10	20	0 4 0	0 4 0
20	50	0 8 0	0 8 0
50	100	1 0 0	1 0 0
100	200	1 4 0	2 0 0
200	300	1 8 0	3 0 0
300	400	1 12 0	4 0 0
400	500	2 0 0	5 0 0
500	600	2 4 0	6 0 0
600	700	2 8 0	7 0 0
700	800	2 12 0	8 0 0
800	900	3 0 0	9 0 0
900	1,000	3 4 0	10 0 0
1,000	1,100	3 6 0	10 8 0
1,100	1,200	3 8 0	11 0 0
1,200	1,300	3 10 0	11 8 0
1,300	1,400	3 12 0	12 0 0
1,400	1,500	3 14 0	12 8 0
1,500	1,600	4 0 0	13 0 0
1,600	1,700	4 2 0	13 8 0
1,700	1,800	4 4 0	14 0 0
1,800	1,900	4 6 0	14 8 0
1,900	2,000	4 8 0	15 0 0

25. The statement of the number and amount of the shares into which the capital of the Company is divided, contained in every copy of the memorandum of association issued after the passing of any such special resolution, shall be in accordance with such resolution; and any Company which makes default in complying with the provisions of this section shall incur a penalty, not exceeding twenty rupees, for each copy in respect of which such default is made, and every director and manager of the Company, who knowingly or wilfully authorizes or permits such default, shall incur the like penalty.

*Associations not for Profit.**

26 Where any association, which might be formed under this Act as a limited Company, proves to the Local Government that it is formed for the purpose of promoting commerce, art, science, charity, or any other useful object, and that it is the intention of such association to apply the profits, if any, or other income of the association, in promoting its objects, and to prohibit the payment of any dividend to its members the Local Government may, by license† under the hand of one of its Secretaries, direct such association to be registered with limited liability, without the addition of the word "limited" to its name, and such association may be registered accordingly, and, upon registration, shall enjoy all the privileges, and be subject to the obligations by this Act imposed on limited Companies, with the exceptions that none of the provisions of this Act that require a limited Company to use the word "limited" as any part of its name, or to publish its name, or to send a list of its members, directors, or managers to the Registrar, shall apply to an association so registered

The license by the Local Government may be granted upon such conditions and subject to such regulations as the Local Government thinks fit to impose; and such conditions and regulations shall be binding on the association, and may, at the option of the Local Government, be inserted in the memorandum and articles of association, or in both or one of such documents.

* Cf. s 23 of the Companies Act, 1867 (Stat 30 & 31 Vict, c 131)

† For instance of such direction, see Madras List of Local Rules and Orders, Vol. I, Ed. 1898, p. 164.

THE PRESIDENCY-TOWNS INSOLVENCY ACT, 1909

(Act No. III. of 1909).

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*Share-warrants to Bearer.**

30. In the case of a Company limited by shares, the Company, if authorized so to do by its regulations fully paid up may be issued as originally framed, or as altered by special resolution, and, subject to the provisions of such regulations, may, with respect to any share which is fully paid up, or with respect to stock, issue, under their common seal, a warrant (hereinafter referred to as a share-warrant) stating that the bearer thereof is entitled to the shares or stock therein specified, and may provide, by coupons or otherwise, for the payment of the future dividends on such shares or stock.

31. A share-warrant shall entitle the bearer thereof to the shares or stock specified therein, and such shares or stock may be transferred by the delivery of the share-warrant.

32. The bearer of a share-warrant shall, subject to the regulations of the Company, be entitled, on surrendering such warrant for cancellation, to have his name entered as a member in the register of members; and the Company shall be responsible for any loss incurred by any person by reason of the Company entering, in its register of members, the name of any bearer of a share-warrant in respect of the shares or stock specified therein without the share-warrant being surrendered and cancelled.

33. The bearer of a share-warrant may, if the regulations of the Company so provide, be deemed to be a member of the Company within the meaning of this Act, either to the full extent, or for such purposes as may be prescribed by the regulations:

Provided that the bearer of a share-warrant shall not be qualified, in respect of the shares or stock specified in such warrant, for being a director or manager of the company in cases where such a qualification is prescribed by the regulations of the Company.

34. On the issue of a share-warrant in respect of any share or stock, the Company shall strike out, of its register of members, the name of

* Cf. ss 27 to 31 and 32 of the Companies Act, 1867 (Stat. 30 & 31 Vict., c. 131).

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subscribers to the memorandum of association, and prescribing such regulations for the Company as the subscribers to the memorandum of association deem expedient.

The articles shall be expressed in separate paragraphs numbered consecutively. They may adopt all or any of the provisions contained in the Table marked A in the First Schedule hereto. They shall, in the case of a Company, whether limited by a guarantee or unlimited, that has a capital divided into shares, state the amount of capital with which the Company proposes to be registered, and, in the case of a Company, whether limited by guarantee or unlimited, that has not a capital divided into shares, state the number of members with which the Company proposes to be registered, for the purpose of enabling the Registrar to determine the fees payable on registration.

In a Company limited by guarantee or unlimited, and having a capital divided into shares, each subscriber shall take one share at the least, and shall write, opposite to his name in the memorandum of association, the number of shares he takes.

38. In the case of a Company limited by shares, if the memorandum of association is not accompanied by articles of association, or, in so far as the articles do not exclude or modify the regulations contained in the Table marked A in the First Schedule hereto, the last-mentioned regulations shall, so far as the same are applicable, be deemed to be the regulations of the Company, in the same manner and to the same extent as if they had been inserted in articles of association, and the articles had been duly registered.

39. The articles of association shall be printed and shall be signed by each subscriber in the presence of, and be attested by, one witness at the least.

When registered, they shall bind the Company and the members thereof to the same extent as if each member had subscribed his name thereto, and as if such articles contained a contract on the part of himself, his heirs, executors, and administrators, to conform to all the regulations contained in such articles subject to the provisions of this Act.

All moneys payable by any member to the Company in pursuance of the conditions and regulations of the Company, or

THE PRESIDENCY-TOWNS INSOLVENCY ACT

1909

(Act No. III. of 1909).

(RECEIVED THE G.-G.'s ASSENT ON THE 12TH MARCH 1909.)

An Act to amend the Law of Insolvency in the Presidency-towns and the Town of Rangoon.

WHEREAS it is expedient to amend the law relating to insolvency in the Presidency-towns and the town of Rangoon; It is hereby enacted as follows:—

PRELIMINARY.

Short title and commencement.

1. (1) This Act may be called the Presidency-towns Insolvency Act, 1909.

(2) It shall come into force on the first day of January 1910.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

- (a) "creditor" includes a decree-holder;
- (b) "debt" includes a judgment-debt, and "debtor" includes a judgment-debtor;
- (c) "Official Assignee" includes an acting Official Assignee;
- (d) "prescribed" means prescribed by rules;
- (e) "property" includes any property over which or the profits of which any person has a disposing power which he may exercise for his own benefit;
- (f) "rules" means rules made under this Act;
- (g) "secured creditor" includes a landlord who, under any enactment for the time being in force, has a charge on land for the rent of that land;
- (h) "the Court" means the Court exercising jurisdiction under this Act; and
- (i) "transfer of property" includes a transfer of any interest therein and any charge created thereon.

incorporated Company, and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the Company, in the event of the same being wound up, as is hereinafter mentioned.

A certificate of the incorporation of any Company given by the Registrar shall be conclusive evidence that all the requisitions of this Act in respect of registration have been complied with.

42. A copy of the memorandum of association, having annexed thereto the articles of association, if any, shall be forwarded to every member, at his request, on payment of such sum, not exceeding one rupee, as may be prescribed by the Company for each copy; and, if any Company makes default in forwarding a copy of the memorandum of association and articles of association, if any, to a member in pursuance of this section, the Company so making default shall, for each such offence, incur a penalty not exceeding twenty rupees.

43. No Company shall be registered under a name identical with that by which a subsisting Company is already registered, or so nearly resembling the same as to be calculated to deceive, except in a case where such subsisting Company is in the course of being dissolved, and testifies its consent in such manner as the Registrar requires.

If any Company, through inadvertence or otherwise, is, without such consent as aforesaid, registered by a name identical with that by which a subsisting Company is registered, or so nearly resembling the same as to be calculated to deceive, such first-mentioned Company may, with the sanction of the Registrar, change its name; and, upon such change being made, the Registrar shall enter the new name on the register in the place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; but no such alteration of name shall affect any rights or obligations of the Company, or render defective any legal proceedings instituted, or to be instituted, by or against the Company, and any legal proceedings may be continued or commenced against the Company by its new name that might have been continued or commenced against the Company by its former name.

(e) to examine any person summoned by the Court under section 36.

(3) An officer appointed under this section shall not have power to commit for contempt of Court.

7. Subject to the provisions of this Act, the Court shall have full power to decide all questions of priorities, and all other questions whatsoever, whether of law or fact, which may arise in any case of insolvency coming within the cognizance of the Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice, or making a complete distribution of property in any such case.

Appeals.

Appeals in insolvency. 8. (1) The Court may review, rescind, or vary any order made by it under its insolvency jurisdiction.

(2) Orders in insolvency matters shall, at the instance of any person aggrieved, be subject to appeal as follows, namely :—

(a) an appeal from an order made by an officer of the Court empowered under section 6 shall lie to the Judge assigned under section 4 for the transaction and disposal of matters in insolvency, and no further appeal shall lie except by leave of such Judge;

(b) save as otherwise provided in clause (a), an appeal from an order made by a Judge in the exercise of the jurisdiction conferred by this Act shall lie in the same way, and be subject to the same provisions, as an appeal from an order made by a Judge in the exercise of the ordinary original civil jurisdiction of the Court.

PART II.

PROCEEDINGS FROM ACT OF INSOLVENCY TO DISCHARGE.

Acts of Insolvency.

Acts of insolvency.

9. A debtor commits an act of insolvency in each of the following cases, namely :—

member, distinguishing each share by its number, and of the amount paid, or agreed to be considered as paid, on the shares of each member;

(b) the date at which the name of any person was entered in the register as a member;

(c) the date at which any person ceased to be a member.

Where a share-warrant has been issued under section 30, until the warrant is surrendered, the particulars mentioned in section 34 shall be deemed to be the particulars which are required by this section to be entered in the register of members of a Company; and, on the surrender of a warrant, the date of such surrender shall be entered as if it were the date at which a person ceased to be a member.

Any Company acting in contravention of this section shall incur a penalty not exceeding fifty rupees for every day during which its default in complying with the provisions of this section continues, and every director or manager of the Company, who knowingly and wilfully authorizes or permits such contravention, shall incur the like penalty.

48. Every Company under this Act, and having a capital divided into shares, shall make, once at least in every year, a list of all persons who, on the fourteenth day succeeding the day on which the ordinary general meeting, or, if there is more than one ordinary general meeting in each year, the first of such ordinary general meetings, is held, are members of the Company. Such list shall state the names, addresses, and occupations of all the members therein mentioned, and the number of shares held by each of them, and shall contain a summary specifying the following particulars:—

Annual list of members.

(a) the amount of the capital of the Company and the number of shares into which it is divided;

(b) the number of shares taken from the commencement of the Company up to the date of the summary;

(c) the amount of calls made on each share;

(d) the total amount of calls received;

(e) the total amount of calls unpaid;

(f) the total amount of shares forfeited;

Explanation.—The presentation of a petition by the debtor shall be deemed an act of insolvency within the meaning of this section, and, on such petition, the Court may make an order of adjudication.

Restrictions on jurisdiction. **11.** The Court shall not have jurisdiction to make an order of adjudication, unless—

- (a) the debtor is, at the time of the presentation of the insolvency petition, imprisoned in execution of the decree of a Court for the payment of money in any prison to which debtors are ordinarily committed by the Court in the exercise of its ordinary original jurisdiction; or
- (b) the debtor, within a year before the date of the presentation of the insolvency petition, has ordinarily resided or had a dwelling-house, or has carried on business, either in person or through an agent, within the limits of the ordinary original civil jurisdiction of the Court; or
- (c) the debtor personally works for gain within those limits; or,
- (d) in the case of a petition by or against a firm of debtors, the firm has carried on business, within a year before the date of the presentation of the insolvency petition, within those limits.

Conditions on which creditor may petition.

12. (1) A creditor shall not be entitled to present an insolvency petition against a debtor unless—

- (a) the debt owing by the debtor to the creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to such creditors, amounts to five hundred rupees, and
- (b) the debt is a liquidated sum payable either immediately, or at some certain future time, and
- (c) the act of insolvency on which the petition is grounded has occurred within three months before the presentation of the petition.

(2) If the petitioning creditor is a secured creditor, he shall, in his petition, either state that he is willing to relinquish his security

the provisions of this Act which are applicable to shares only shall cease as to so much of the capital as is converted into stock; and the register of members hereby required to be kept by the Company, and the list of members to be forwarded to the Registrar, shall show the amount of stock held by each member in the list instead of the amount of shares and the particulars relating to shares hereinbefore required.

53. No notice of any trust, express, implied, or constructive, shall be entered on the register, or be receivable by the Registrar in the case of Companies under this Act, and registered in British India.

54. A certificate under the common seal of the Company, Certificate of shares or specifying any shares or stock held by any member of a Company, shall be *prima-facie* evidence of the title of the member to the share or shares or stock therein specified.

55.* The register of members, commencing from the date of the registration of the Company, shall be kept at the registered office of the Company hereinafter mentioned. Except when closed as hereinafter mentioned, it shall, during business-hours, but subject to such reasonable restrictions as the Company in general meeting may impose, so that not less than two hours in each day be appointed for inspection, be open to the inspection of any member gratis, and to the inspection of any other person on the payment of one rupee or such less sum as the Company may prescribe for each inspection.

Every such member or other person may require a copy of such register, or of any part thereof, or of such list or summary of members as is hereinbefore mentioned, on payment of two annas for every hundred words required to be copied.

If such inspection or copy is refused, the Company shall incur for each refusal a penalty not exceeding fifty rupees, and a further penalty not exceeding twenty rupees for every day during which such refusal continues.

Every director and manager of the Company who knowingly authorizes or permits such refusal shall incur the like penalty.

* The provisions of this section and of s. 60 apply to duplicate registers.—See s. 3 (4) of the Indian Companies (Branch Registers) Act (IV. of 1900)—Appendix III., *infra*.

(7) Where proceedings are stayed, the Court may, if, by reason of the delay caused by the stay of proceedings or for any other cause, it thinks just, make an order of adjudication on the petition of some other creditor, and shall thereupon dismiss, on such terms as it thinks just, the petition on which proceedings have been stayed as aforesaid.

(8) A creditor's petition shall not, after presentation, be withdrawn without the leave of the Court.

Conditions on which debtor may petition.

14. A debtor shall not be entitled to present an insolvency petition unless—

(a) his debts amount to five hundred rupees, or

(b) he has been arrested and imprisoned in execution of the decree of any Court for the payment of money, or

(c) an order of attachment in execution of such a decree has been made, and is subsisting against his property.

15. (1) A debtor's petition shall allege that the debtor is unable to pay his debts, and, if the debtor proves that he is entitled to present the petition, the Court may thereupon make an order of adjudication unless, in its opinion, the petition ought to have been presented before some other Court having insolvency jurisdiction.

(2) A debtor's petition shall not, after presentation, be withdrawn without the leave of the Court.

16. The Court may, if it is shown to be necessary for the protection of the estate, at any time after the presentation of an insolvency petition, and before an order of adjudication is made, appoint the Official Assignee to be *interim* receiver of the property of the debtor, or of any part thereof, and direct him to take immediate possession thereof or any part thereof, and the Official Assignee shall thereupon have such of the powers conferable on a Receiver appointed under the Code of Civil Procedure, 1908,* as may be prescribed.

* Act V. of 1908.

justice of the case, make an order for the rectification of the register, and may direct the Company to pay all the costs of such application, and any damages the party aggrieved may have sustained.

The Court may, in any proceeding under this section, decide any question relating to the title of any person who is a party to such proceeding to have his name entered in, or omitted from, the register, whether such question arises between two or more members or alleged members, or between any members or alleged members, and the Company, and whether there has or has not been default on the part of the Company; and generally the Court may, in any such proceeding, decide any question that it may be necessary or expedient to decide for the rectification of the register provided that the Court may direct an issue to be tried in which any question of law may be raised; and an appeal in the manner directed by the Code of Civil Procedure shall lie.

59. Whenever any order has been made for rectifying the Notice to Registrar of register in the case of a Company here-rectification of register. by required to send a list of its members to the Registrar, the Court shall, by its order, direct that due notice of such rectification be given to the Registrar.

60.† The register of members shall be *prima-facie* evidence of any matters by this Act directed or authorized to be inserted therein.
Register to be evidence.

Liability of Members.

61. In the event of a Company formed under this Act being wound up, every present and past member of such Company shall be liable to contribute to the assets of the Company to an amount sufficient for payment of the debts and liabilities of the Company, and the costs, charges, and expenses of the winding-up, and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves, with the qualifications following (that is to say):—

- (a) No past member shall be liable to contribute to the assets of the Company if he has ceased to be a member for a period of one year or upwards prior to the commencement of the winding-up:

* This reference should now be read as applying to Act V of 1908—See s. 158 of that Act

† See footnote to s. 55 at p. 30 *supra*.

20. Notice of every order of adjudication, stating the name, address, and description of the insolvent, the date of the adjudication, the Court by which the adjudication is made, and the date of presentation of the petition, shall be published in the *Gazette of India*, and in the local official Gazette, and in such other manner as may be prescribed.

Annulment of Adjudication.

21. (1) Where, in the opinion of the Court, a debtor ought not to have been adjudged insolvent, or where it is proved to the satisfaction of the Court that the debts of the insolvent are paid in full, the Court may, on the application of any person interested, by order annul the adjudication.

(2) For the purposes of this section, any debt disputed by a debtor shall be considered as paid in full if the debtor enters into a bond, in such sum and with such sureties as the Court approves, to pay the amount to be recovered in any proceeding for the recovery of or concerning the debt with costs, and any debt due to a creditor who cannot be found, or cannot be identified, shall be considered as paid in full if paid into Court.

22. Where it is proved to the satisfaction of the Court that insolvency proceedings are pending in any other British Court, whether within or without British India, against the same debtor, and that the property of the debtor can be more conveniently distributed by such other Court, the Court may annul the adjudication, or may stay all proceedings thereon.

23. (1) Where an adjudication is annulled, all sales and dispositions of property and payments duly made, and all acts theretofore done, by the Official Assignee or other person acting under his authority, or by the Court, shall be valid, but the property of the debtor who was adjudged insolvent shall vest in such person as the Court may appoint, or, in default of any such appointment, shall revert to the debtor to the extent of his right or interest therein, on such terms and subject to such conditions (if any) as the Court may declare by order.

(2) Where a debtor has been released from custody under the provisions of this Act, and the order of adjudication is annulled

62.* With respect to the contributions to be required in the event of the winding-up of a limited Liability of director whose liability is unlimited. Company from any director or manager whose liability is unlimited, the following modifications shall be made in the last-preceding section :—

- (a) Subject to the provisions hereinafter contained, any such director or manager, whether past or present shall, in addition to his liability (if any) to contribute as an ordinary member, be liable to contribute as if he were, at the date of the commencement of such winding-up, a member of an unlimited Company.
- (b) No contribution required from any past director or manager, who has ceased to hold such office for a period of one year or upwards prior to the commencement of the winding-up, shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the Company.
- (c) No contribution required from any past director or manager in respect of any debt or liability of the Company contracted after the time at which he ceased to hold such office shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the Company.
- (d) Subject to the provisions contained in the regulations of the Company, no contribution required from any director or manager shall exceed the amount (if any) which he is liable to contribute as an ordinary member unless the Court thinks it necessary to require such contribution in order to satisfy the debts and liabilities of the Company, or the costs, charges, and expenses of the winding-up.

PART III.

MANAGEMENT AND ADMINISTRATION OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Provisions for Protection of Creditors.

63. Every Company under this Act shall have a registered office to which all communications and notices may be addressed. If any

* Cf. s. 5 of the Companies Act, 1867 (Stat. 30 & 31 Vict., c. 131).

proper, and may commence and take effect at and for such time as the Court may direct, and may be revoked or renewed as the Court may think fit.

(3) A protection-order shall protect the insolvent from being arrested or detained in prison for any debt to which such order shall apply, and any insolvent arrested or detained contrary to the terms of such order shall be entitled to his release :

Provided that no such order shall operate to prejudice the right of any creditor in the event of such order being revoked or the adjudication annulled.

(4) Any creditor shall be entitled to appear and oppose the grant of a protection-order, but the insolvent shall be *prima facie* entitled to such order on production of a certificate signed by the Official Assignee that he has so far conformed to the provisions of this Act.

(5) The Court may make a protection order before an insolvent has submitted his schedule if it thinks it necessary to do so in the interests of the creditors.

26. (1) At any time after the making of an order of adjudication against an insolvent, the Court, on the application of a creditor or of the Official Assignee, may direct that a meeting of creditors shall be held to consider the circumstances of the insolvency and the insolvent's schedule and his explanation thereof, and, generally, as to the mode of dealing with the property of the insolvent.

(2) With respect to the summoning of, and proceedings at, a meeting of creditors, the rules in the First Schedule shall be observed.

27. (1) Where the Court makes an order of adjudication, it shall hold a public sitting on a day to be appointed by the Court, of which notice shall be given to creditors in the prescribed manner, for the examination of the insolvent, and the insolvent shall attend thereat, and shall be examined as to his conduct, dealings, and property.

(2) The examination shall be held as soon as conveniently may be after the expiration of the time for the filing of the insolvent's schedule.

(3) Any creditor who has tendered a proof or a legal practitioner on his behalf may question the insolvent concerning his affairs and the causes of his failure.

porting to be a seal of the Company whereon its name is not so engraven as aforesaid, or issues, or authorizes the issue of, any notice, advertisement, or other official publication of such Company, or signa, or authorizes to be signed, on behalf of such Company, any bill of exchange, hundi, promissory note, endorsement, cheque, or* order for money or goods, or issues, or authorizes to be issued, any bill of parcels, invoice, receipt, or letter of credit of the Company wherein its name is not mentioned in manner aforesaid, he shall be liable to a penalty of one thousand rupees; and shall further be personally liable to the holder of any such bill of exchange, hundi, promissory note, cheque, or order for money or goods for the amount thereof, unless the same is duly paid by the Company.

Contracts.

67.† Contracts on behalf of any Company under this Act may be made as follows (that is to say):—
Contracts how made.

- (a) Any contract, which, if made between private persons, would be by law required to be in writing, and, if made according to English law, to be under seal, may be made on behalf of the Company in writing under the common seal of the Company; and such contract may be in the same manner varied or discharged:
- (b) Any contract, which, if made between private persons, would be by law required to be in writing signed by the parties to be charged therewith, may be made on behalf of the Company in writing signed by any person acting under the express or implied authority of the Company: and such contract may, in the same manner, be varied or discharged:
- (c) Any contract, which, if made between private persons, would by law be valid, although made by parol only, and not reduced into writing, may be made by parol on behalf of the Company by any person acting under the express or implied authority of the Company, and such contract may, in the same way,

* In s. 66, the word "or" has been inserted by the Repealing and Amending Act (XII of 1891).

† Cf. s. 37 of the Companies Act, 1867 (Stat. 30 & 31 Vict., c. 131).

(3) The insolvent may, at the meeting, amend the terms of his proposal if the amendment is, in the opinion of the Official Assignee, calculated to benefit the general body of creditors.

(4) Any creditor who has proved his debt may assent to, or dissent from, the proposal by a letter in the prescribed form addressed to the Official Assignee so as to be received by him not later than the day preceding the meeting, and any such assent or dissent shall have effect as if the creditor had been present, and had voted at the meeting.

29. (1) The insolvent or the Official Assignee may, after approval of proposal by the proposal is accepted by the creditors, apply to the Court to approve it, and notice of the time appointed for hearing the application shall be given to each creditor who has proved.

(2) Except where an estate is being summarily administered or special leave of the Court has been obtained, the application shall not be heard until after the conclusion of the public examination of the insolvent. Any creditor who has proved may be heard by the Court in opposition to the application notwithstanding that he may, at a meeting of creditors, have voted for the acceptance of the proposal.

(3) The Court shall, before approving the proposal, hear a report of the Official Assignee as to the terms thereof, and as to the conduct of the insolvent and any objections which may be made by or on behalf of any creditor.

(4) Where the Court is of opinion that the terms of the proposal are not reasonable, or are not calculated to benefit the general body of creditors, or in any case in which the Court is required to refuse the insolvent's discharge, the Court shall refuse to approve the proposal.

(5) Where any facts are proved on proof of which the Court would be required either to refuse, suspend, or attach conditions to the debtor's discharge, the Court shall refuse to approve the proposal unless it provides reasonable security for payment of not less than four annas in the rupee on all the unsecured debts proveable against the debtor's estate.

(6) No composition or scheme shall be approved by the Court which does not provide for the payment, in priority to other debts, of all debts directed to be so paid in the distribution of the property of an insolvent.

(7) In any other case the Court may either approve or refuse to approve the proposal.

the form marked D in the First Schedule hereto, or as near thereto as circumstances will admit: and a copy of such statement shall be put up in a conspicuous place in the registered office of the Company, and in every branch-office or place where the business of the Company is carried on.

If default is made in compliance with the provisions of this section, the Company shall be liable to a penalty not exceeding fifty rupees for every day during which such default continues; and every director and manager of the Company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

Every member and every creditor of any Company mentioned in this section shall be entitled to a copy of the above-mentioned statement on payment of a sum not exceeding eight annas.

70. Every Company under this Act, and not having a capital divided into shares, shall keep at its registered office a register containing the names and addresses and the occupations of its directors or managers, and shall send to the Registrar of Joint-stock Companies a copy of such register, and shall, from time to time, notify to the Registrar any change that takes place in such directors or managers.

71 If any Company under this Act, and not having a capital divided into shares, makes default in keeping register of directors. keeping a register of its directors or managers, or in sending a copy of such register to the Registrar in compliance with the foregoing rules, or in notifying to the Registrar any change that takes place in such directors or managers, such delinquent Company shall incur a penalty not exceeding one hundred rupees for every day during which such default continues; and every director or manager of the Company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

72. A promissory note, bill of exchange, or hundi shall be deemed to have been made, drawn, exchange, and hundis. accepted, or endorsed on behalf of any Company under this Act if made, drawn, accepted, or endorsed in the name of the Company by any person acting under the authority of the Company, or if made, drawn, accepted, or endorsed by, or on behalf or on account of, the Company by any person acting under the authority of the Company.

shall submit to such examination, and give such information, as the meeting may require.

(2) The insolvent shall—

- (a) give such inventory of his property, such list of his creditors and debtors, and of the debts due to and from them respectively,
- (b) submit to such examination in respect of his property or his creditors,
- (c) wait at such times and places on the Official Assignee or special manager,
- (d) execute such powers-of-attorney, transfers, and instruments, and
- (e) generally do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors,

as may be required by the Official Assignee or special manager, or may be prescribed, or be directed by the Court by any special order or orders made in reference to any particular case, or made on the occasion of any special application by the Official Assignee or special manager, or any creditor or person interested.

(3) The insolvent shall aid, to the utmost of his power, in the realisation of his property and the distribution of the proceeds among his creditors.

(4) If the insolvent wilfully fails to perform the duties imposed upon him by this section, or to deliver up possession to the Official Assignee of any part of his property, which is divisible amongst his creditors under this Act, and which is for the time being in his possession or under his control, he shall, in addition to any other punishment to which he may be subject, be guilty of a contempt of Court, and may be punished accordingly.

34. (1) The Court may, either of its own motion, or at the instance of the Official Assignee or of any creditor, by warrant addressed to any police-officer or prescribed officer of the Court, cause an insolvent to be arrested, and committed to the civil prison, or, if in prison, to be detained until such time as the Court may order, under the following circumstances, namely :—

Arrest of insolvent.

Meetings.

75.* Every Company formed under this Act after the commencement of this Act shall hold a general meeting within six months after its memorandum of association is registered; and, if such meeting is not held, the Company shall be liable to a penalty, not exceeding fifty rupees a day, for every day after the expiration of such six months until the meeting is held; and every director or manager of the Company, and every subscriber of the memorandum of association, who knowingly authorizes or permits such default, shall be liable to the same penalty.

76. Subject to the provisions of this Act, and to the conditions contained in the memorandum of association, any Company formed under this Act or the Indian Companies Act, 1866,† may, in general meeting, from time to time, by passing a special resolution in manner hereinafter mentioned, alter all or any of the regulations of the Company contained in the articles of association or in the Table marked A in the First Schedule, where such table is applicable to the Company, or make new regulations to the exclusion of, or in addition to, all or any of the regulations of the Company.

‡ Any regulations so made by special resolution shall be deemed to be regulations of the Company of the same validity as if they had been originally contained in the articles of association, and shall be subject in like manner to be altered or modified by any subsequent special resolution.

Any limited Company formed under this Act or the Indian Companies Act, 1866 † may, by a special resolution, if authorized to do so by its regulations as originally framed, or as altered by special resolution, from time to time, modify the conditions contained in its memorandum of association so far as to render unlimited, from and after the date of such resolution, the liability of its directors or managers, or of the managing director. Such special resolution shall be of the same validity as if it had been originally contained in the memorandum of association, and a copy thereof shall be embodied in, or annexed to, every copy of the memorandum of association which is issued after the passing of the resolution.

* Cf. s. 39 of the Companies Act, 1867 (Stat. 30 & 31 Vict., c. 131).

† Act X of 1866 (repealed by s. 2 of this Act).

‡ Cf. s. 8 of the Companies Act, 1867 (Stat. 30 & 31 Vict., c. 131).

Court may require any such person to produce any documents in his custody or power relating to the insolvent, his dealings, or property.

(2) If any person so summoned, after having been tendered a reasonable sum, refuses to come before the Court at the time appointed, or refuses to produce any such document, having no lawful impediment made known to the Court at the time of its sitting and allowed by it, the Court may, by warrant, cause him to be apprehended and brought up for examination.

(3) The Court may examine any person so brought before it concerning the insolvent, his dealings, or property, and such person may be represented by a legal practitioner.

(4) If, on the examination of any such person, the Court is satisfied that he is indebted to the insolvent, the Court may, on the application of the Official Assignee, order him to pay to the Official Assignee, at such time and in such manner as to the Court seems expedient, the amount in which he is indebted, or any part thereof, either in full discharge of the whole amount or not, as the Court thinks fit, with or without costs of the examination.

(5) If, on the examination of any such person, the Court is satisfied that he has in his possession any property belonging to the insolvent, the Court may, on the application of the Official Assignee, order him to deliver to the Official Assignee that property, or any part thereof, at such time, in such manner, and on such terms, as to the Court may seem just.

(6) Orders made under sub-sections (4) and (5) shall be executed in the same manner as decrees for the payment of money, or for the delivery of property, under the Code of Civil Procedure, 1908,* respectively.

(7) Any person making any payment or delivery in pursuance of an order made under sub-section (4) or sub-section (5) shall, by such payment or delivery, be discharged from all liability whatsoever in respect of such debt or property.

37. The Court shall have the same powers to issue commissions and letters of request for the examination on commission or otherwise of any person liable to examination under section 36 as it has for the examination of witnesses under the Code of Civil Procedure, 1908 *

* Act V. of 1908.

79. A copy of every special resolution that is passed by any Company under this Act shall be printed and forwarded to the Registrar of Joint-stock Companies, and be recorded by him.

If such copy is not so forwarded within fifteen days from the date of the confirmation of the resolution, the Company shall incur a penalty, not exceeding twenty rupees, for every day after the expiration of such fifteen days during which such copy is omitted to be forwarded; and every director and manager of the Company, who knowingly and wilfully authorizes or permits such default, shall incur the like penalty.

80. Where articles of association have been registered, a copy of every special resolution for the time being in force shall be annexed to, or embodied in, every copy of the articles of association that may be issued after the passing of such resolution. Where no articles of association have been registered, a copy of every special resolution shall be forwarded in print to any member requesting the same on payment of one rupee or such less sum as the Company may direct.

If any Company makes default in complying with the provisions of this section or section 76, it shall incur a penalty, not exceeding twenty rupees, for each copy in respect of which such default is made; and every director and manager of the Company, who knowingly and wilfully authorizes or permits such default, shall incur the like penalty.

81. Any Company under this Act may, by instrument in writing under its common seal, empower any person, either generally, or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place not situate in British India; and every deed signed by such attorney on behalf of the Company, and under his seal, shall be binding on the Company, and have the same effect as if it were under the common seal of the Company.

82. The Local Government may appoint one or more competent inspectors to examine into the affairs of any Company under this Act, and to report thereon in such manner as the Local Government may direct upon the applications following (that is to say):—

or after-acquired property of the insolvent in such manner and subject to such conditions as the Court may direct; but, in that case, the decree shall not be executed without leave of the Court which leave may be given on proof that the insolvent has, since his discharge, acquired property or income available for payment of his debts.

(2) The facts hereinbefore referred to are—

- (a) that the insolvent's assets are not of a value equal to four annas in the rupee on the amount of his unsecured liabilities, unless he satisfies the Court that the fact, that the assets are not of such value, has arisen from circumstances for which he cannot justly be held responsible;
- (b) that the insolvent has omitted to keep such books of account as are usual and proper in the business carried on by him and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his insolvency;
- (c) that the insolvent has continued to trade after knowing himself to be insolvent;
- (d) that the insolvent has contracted any debt proveable under this Act without having, at the time of contracting it, any reasonable or probable ground of expectation (the burden of proving which shall lie on him) that he would be able to pay it;
- (e) that the insolvent has failed to account satisfactorily for any loss of assets, or for any deficiency of assets, to meet his liabilities;
- (f) that the insolvent has brought on or contributed to his insolvency by rash or hazardous speculations or by unjustifiable extravagance in living, or by gambling, or by culpable neglect of his business affairs;
- (g) that the insolvent has put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any suit properly brought against him;
- (h) that the insolvent has, within three months preceding the time of presentation of the petition, incurred unjustifiable expense by bringing a frivolous or vexatious suit;

All expenses of, and incidental to, any such examination as aforesaid shall be defrayed by the members upon whose application the inspectors were appointed, unless the Local Government shall direct the same to be paid out of the assets of the Company, which the Local Government is hereby authorized to do.

86. Any Company under this Act may, by special resolution, Power of Company to ap- appoint inspectors for the purpose of point inspectors. examining into the affairs of the Company.

The inspectors so appointed shall have the same powers and perform the same duties as inspectors appointed by the Local Government with this exception that, instead of making their report to the Local Government, they shall make the same in such manner, and to such persons, as the Company, in general meeting, directs.

The officers and agents of the Company shall incur the same penalties in case of any refusal to produce any book or document hereby required to be produced to such inspectors, or to answer any question, as they would have incurred if such inspectors had been appointed by the Local Government.

87. A copy of the report of any inspectors appointed under this Act, authenticated by the seal of the Company into whose affairs they have made inspection, shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in such report. Report of inspectors to be evidence.

88. Every prospectus of a Company, and every notice inviting persons to subscribe for shares in any Joint-stock Company, shall specify the dates of,* and the names of the parties to, any agreement enforceable by law which has been entered into by the Company, or the promoters, directors, or trustees thereof, before the issue of such prospectus or notice (whether subject to adoption by the directors or the Company, or otherwise), and which might reasonably influence a person in determining whether he would or would not become a shareholder in the Company; and any prospectus or notice not specifying Prospectus, &c., to specify dates and names of parties to certain prior contracts.

* The word "of" has been inserted by the Repealing and Amending Act. (XII. of 1891).

order, or of any substituted order, in such manner, and upon such conditions, as it may think fit.

43. A discharged insolvent shall, notwithstanding his discharge, give such assistance as the Official Assignee may require in the realisation and distribution of such of his property as is vested in the Official Assignee, and, if he fails to do so, shall be guilty of a contempt of Court; and the Court may also, if it thinks fit, revoke his discharge, but without prejudice to the validity of any sale, disposition, or payment duly made or thing duly done subsequent to the discharge, but before its revocation.

Fraudulent settlements.

44. In either of the following cases, that is to say —

- (1) in the case of a settlement made before and in consideration of marriage where the settlor is not, at the time of making the settlement, able to pay all his debts without the aid of the property comprised in the settlement; or,
- (2) in the case of any covenant or contract made in consideration of marriage for the future settlement on or for the settlor's wife or children of any money or property wherein he had not, at the date of his marriage, any estate or interest (not being money or property of, or in right of, his wife);

if the settlor is adjudged insolvent or compounds or arranges with his creditors, and it appears to the Court that the settlement, covenant, or contract was made in order to defeat or delay creditors, or was unjustifiable, having regard to the state of the settlor's affairs at the time when it was made, the Court may refuse or suspend an order of discharge, or grant an order subject to conditions, or refuse to approve a composition or arrangement.

Effect of order of discharge.

45. (1) An order of discharge shall not release the insolvent from—

- (a) any debt due to the Crown;
- (b) any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party; or

which such resolutions were passed, or proceedings had, or by the chairman of the next succeeding meeting, shall be received as evidence in all legal proceedings.

Until the contrary is proved, every general meeting of the Company, or meeting of directors or managers, in respect of the proceedings of which minutes have been so made, shall be deemed to have been duly held and convened, and all resolutions passed thereat, or proceedings had, to have been duly passed and had; and all appointments of directors, managers, or liquidators shall be deemed to be valid; and all acts done by such directors, managers, or liquidators shall be valid, notwithstanding any defect that may afterwards be discovered in their appointments or qualifications.

Explanation.—Nothing in this section shall be deemed to give validity to acts done by a liquidator after his appointment has been shown to be invalid.

98. Where a limited Company is plaintiff in any suit, if it appears from the evidence adduced that suits brought by certain limited Companies. there is reason to believe that, if the defendant be successful in his defence, the assets of the Company will be insufficient to pay his costs, any Judge having jurisdiction in the matter may require sufficient security to be given for such costs, and may stay all proceedings until such security is given.

94. In any suit brought by the Company against any member to recover any call or other moneys due from such member in his character of member, it shall be sufficient to allege that the defendant is a member of the Company, and is indebted to the Company in respect of a call made or other moneys due, whereby a suit has accrued to the Company.

Alteration of Forms.

95. The forms set forth in the Second Schedule hereto, or forms as near thereto as circumstances admit, shall be used in all matters to which such forms refer.

The Governor-General in Council may, from time to time, make such alterations in the tables and forms contained in the First Schedule

Governor-General in Council may alter forms.

reason of its being subject to any contingency or contingencies, or for any other reason, does not bear a certain value:

Provided that, if, in his opinion, the value of the debt or liability is incapable of being fairly estimated, he shall issue a certificate to that effect, and thereupon the debt or liability shall be deemed to be a debt not proveable in insolvency.

Explanation.—For the purposes of this section “liability” includes any compensation for work or labour done, any obligation or possibility of an obligation to pay money or money’s worth on the breach of any express or implied covenant, contract, agreement, or undertaking, whether the breach does or does not occur, or is or is not likely to occur, or capable of occurring, before the discharge of the debtor, and generally it includes any express or implied engagement, agreement, or undertaking to pay, or capable of resulting in the payment of, money or money’s worth, whether the payment is, as respects amount, fixed or unliquidated; as respects time, present or future, certain or dependent on any contingency or contingencies; as to mode of valuation, capable of being ascertained by fixed rules, or as matter of opinion.

47. Where there have been mutual dealings between an insolvent and a creditor proving or claiming to prove a debt under this Act, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set-off against any sum due from the other party, and the balance of the account, and no more, shall be claimed or paid on either side respectively:

Provided that a person shall not be entitled under this section to claim the benefits of any set-off against the property of an insolvent in any case where he had, at the time of giving credit to the insolvent, notice of the presentation of any insolvency petition by or against him.

48. With respect to the mode of proving debts, the right of proof by secured and other creditors, the admission and rejection of proofs, and the other matters referred to in the Second Schedule, the rules in that schedule shall be observed.

49. (1) In the distribution of the property of the insolvent, there shall be paid, in priority to all other debts—
Priority of debts.

100. Except where the Companies agree that the reference shall be made to a single arbitrator, the Reference to two or more arbitrators. reference shall be made as follows, to wit:—

where there are two Companies, the reference shall be made to two arbitrators;

where there are three or more Companies, the reference shall be made to so many arbitrators as there are Companies.

101. Where there are to be two or more arbitrators, every Appointment of arbitrators by Companies. Company shall, by writing under their common seal, appoint one of the arbitrators, and shall give notice in writing thereof to the other Company or Companies.

102. Where there are to be two or more arbitrators, if any Appointment of arbitrators by Local Government. arbitrator within fourteen days after being thereunto requested in writing by the other Company, or by the other Companies or any of them, then, on the application of the Companies or any of them, the Local Government, instead of the Company so failing to appoint an arbitrator, may appoint an arbitrator. The arbitrator so appointed shall, for the purposes of this Act, be deemed to be appointed by the Company so failing.

103. Where the reference is made to two or more arbitrators, Appointment of arbitrators by Companies to supply vacancies. if, before the matters referred to them are determined, any arbitrator dies, or becomes incapable or unfit, or, for seven consecutive days, fails to act as arbitrator, the Company by which he was appointed shall, by writing under their common seal, appoint an arbitrator in his place.

104. Where the Company, by which an arbitrator ought to be appointed in the place of the arbitrator so deceased, incapable, unfit, or failing to act, fails to make the appointment within fourteen days after being thereunto requested in writing by the other Company, or by the other Companies or any of them, then, on the application of the Companies or any of them, the Local Government may appoint an arbitrator.

The arbitrator so appointed shall, for the purposes of this Act, be deemed to be appointed by the Company so failing.

Property available for Payment of Debts

51. The insolvency of a debtor, whether the same takes place on the debtor's own petition or upon that of a creditor or creditors, shall be deemed to have relation back to, and to commence at,—

- (a) the time of the commission of the act of insolvency on which an order of adjudication is made against him, or,
- (b) if the insolvent is proved to have committed more acts of insolvency than one, the time of the first of the acts of insolvency proved to have been committed by the insolvent within three months next preceding the date of the presentation of the insolvency petition:

Provided that no insolvency petition or order of adjudication shall be rendered invalid by reason of any act of insolvency committed anterior to the debt of the petitioning creditor.

52. (1) The property of the insolvent divisible amongst his creditors, and in this Act referred to as the property of the insolvent, shall not comprise the following particulars, namely—

- (a) property held by the insolvent on trust for any other person;
- (b) the tools (if any) of his trade and the necessary wearing apparel, bedding, cooking vessels, and furniture of himself, his wife, and children, to a value, inclusive of tools and apparel and other necessities as aforesaid, not exceeding three hundred rupees in the whole.

(2) Subject as aforesaid, the property of the insolvent shall comprise the following particulars, namely—

- (a) all such property as may belong to, or be vested in, the insolvent at the commencement of the insolvency, or may be acquired by, or devolve on, him before his discharge;
- (b) the capacity to exercise, and to take proceedings for exercising, all such powers in or over, or in respect of, property as might have been exercised by the insolvent for his own benefit at the commencement of his insolvency or before his discharge; and

agree on their award thereon, then the matters referred to them, or such of those matters as are not then determined, shall stand referred to their umpire.

112. The arbitrator, and the arbitrators and the umpire, respectively, may call for the production of any documents or evidence in the possession or power of the Companies respectively, or which they respectively can produce, and which the arbitrator, or the arbitrators or the umpire, shall think necessary for determining the matters referred, and may examine the witnesses of the Companies respectively on oath.

113. Except where, and as the Companies otherwise agree, the arbitrator, and the arbitrators and the umpire, respectively, may proceed in the business of the reference in such manner as he and they respectively shall think fit.

114. The arbitrator, and the arbitrators and the umpire, respectively, may proceed, in the absence of all or any of the Companies, in every case in which, after giving notice in that behalf to the Companies respectively, the arbitrator, or the arbitrators or the umpire, shall think fit so to proceed.

115. The arbitrator, and the arbitrators and the umpire, respectively, may, if he and they, respectively, think fit, make several awards, each on part of the matters referred, instead of one award on all the matters referred.

Every such award on part of the matters shall, for such time as shall be stated in the award, the same being such as shall have been specified in the agreement for arbitration, or, in the event of no time having been so specified, for any time which the arbitrator may be legally entitled to fix, be binding as to all the matters to which it extends, and as if the matters awarded on were all the matters referred, and that, notwithstanding the other matters or any of them, be not then or thereafter awarded on.

116 The award of the arbitrator, or of the arbitrators or of the umpire, if made in writing, under his or their respective hand or hands, and ready to be delivered to the Companies within such a time as the

transferor is adjudged insolvent within two years after the date of the transfer, be void against the Official Assignee.

56. (1) Every transfer of property, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor, with a view of giving that creditor a preference over the other creditors, shall, if such person is adjudged insolvent on a petition presented within three months after the date thereof, be deemed fraudulent and void as against the Official Assignee.

(2) This section shall not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the insolvent.

57. Subject to the foregoing provisions with respect to the effect of insolvency on an execution, and with respect to the avoidance of certain transfers and preferences, nothing in this Act shall invalidate, in the case of an insolvency—

- (a) any payment by the insolvent to any of his creditors;
- (b) any payment or delivery to the insolvent;
- (c) any transfer by the insolvent for valuable consideration;
- or
- (d) any contract or dealing by or with the insolvent for valuable consideration :

Provided that any such transaction takes place before the date of the order of adjudication, and that the person with whom such transaction takes place has not at the time notice of the presentation of any insolvency petition by or against the debtor.

Realisation of Property.

58. (1) The Official Assignee shall, as soon as may be, take possession of the deeds, books, and documents of the insolvent, and all other parts of his property capable of manual delivery.

(2) The Official Assignee shall, in relation to, and for the purpose of acquiring or retaining possession of, the property of the insolvent, be in the same position as if he were a receiver of the

123. On the application of any party interested, the sub-
 mission to arbitration mission to any such arbitration may be
 to be filed in Court. filed in the High Court, and an order of
 reference may be made thereon, with any directions the Court
 thinks fit, and the provisions of the Code of Civil Procedure* shall,
 so far as the same are applicable, apply to every such order, and
 to all proceedings thereunder.

PART IV.

WINDING-UP OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Preliminary.

124. The term "contributory" shall mean every person liable
 Meaning of "contribu- to contribute to the assets of a Company
 tory." under this Act in the event of the same
 being wound up; it shall also, in all proceedings for determining
 the persons who are to be deemed contributories, and in all pro-
 ceedings prior to the final determination of such persons, include
 any person alleged to be a contributory.

125. The liability of any person to contribute to the assets
 Nature of liability of con- of a Company under this Act, in the
 tributory. event of the same being wound up, shall
 be deemed to create a debt accruing due from such person at the
 time when his liability commenced, but payable at the time or
 respective times when calls are made, as hereinafter mentioned, for
 enforcing such liability; and it shall be lawful, in the case of the
 insolvency of any contributory, to prove against his estate the
 estimated value of his liability to future calls, as well as calls
 already made.

No claim founded on the liability of a contributory shall be
 cognizable by any Court of Small Causes situate outside the towns
 of Calcutta, Madras, and Bombay.

126. If any contributory dies either before or after he has
 Contributories in case of been placed on the list of contributories
 death. hereinafter mentioned, his personal re-
 presentatives, heirs, and devisees shall be liable, in due course of

* This reference should now be read as applying to Act V. of 1908.—
 See s. 158 of that Act.

(2) Where an insolvent is in the receipt of a salary or income other than as aforesaid, the Court may, at any time after adjudication, and from time to time, make such order as it thinks just for the payment to the Official Assignee, for distribution among the creditors, of so much of such salary or income as may be liable to attachment in execution of a decree, or of any portion thereof.

61. The property of the insolvent shall pass from Official Assignee to Official Assignee, and shall vest in the Official Assignee for the time being during his continuance in office, without any transfer whatever.

62. (1) Where any part of the property of an insolvent consists of land of any tenure burdened with onerous covenants, of shares or stocks in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the Official Assignee may, notwithstanding that he may have endeavoured to sell or have taken possession of the property, or exercised any act of ownership in relation thereto, but subject always to the provisions hereinafter contained in that behalf, by writing signed by him, at any time within twelve months after the insolvent has been adjudged insolvent, disclaim the property:

Provided that, where any such property has not come to the knowledge of the Official Assignee within one month after such adjudication as aforesaid, he may disclaim the property at any time within twelve months after he has first become aware thereof.

(2) The disclaimer shall operate to determine, as from the date thereof, the rights, interests, and liabilities of the insolvent and his property in or in respect of the property disclaimed, and shall also discharge the Official Assignee from all personal liability in respect of the property disclaimed as from the date when the property vested in him, but shall not, except so far as is necessary for the purpose of releasing the insolvent and his property, and the Official Assignee from liability, affect the rights or liabilities of any other person.

63. Subject always to such rules as may be made in this behalf, the Official Assignee shall not be entitled to disclaim any leasehold interest.

Disclaimer of leaseholds.

Company, by leaving the same at its registered office, a demand under his hand requiring the Company to pay the sum so due, and the Company has, for the space of three weeks succeeding the service of such demand, neglected to pay such sum, or to secure or compound for the same to the reasonable satisfaction of the creditor ;

(b) whenever execution or other process issued on a decree or order obtained in any Court in favour of any creditor in any proceeding instituted by such creditor against the Company is returned unsatisfied, in whole or in part ;

(c) whenever it is proved, to the satisfaction of the Court, that the Company is unable to pay its debts.

180. The expression, "the Court," as used in this Part of this Act, shall mean the principal Court having original civil jurisdiction in the place in which the registered office of the Company is situate, unless, in the regulations for the management of the Company, it shall be stipulated that the Company, if wound up, shall be wound up by the High Court of Judicature at Fort William, Madras, or Bombay (as the case may be), or by the Chief Court of the Punjab, in which case the word "Court" shall mean the said High Court or Chief Court (as the case may be) in the exercise of its original civil jurisdiction.

The expression "debts" as used in this Part of this Act, means debts actually due, of which the creditor could claim immediate payment, except in the case of a Company issuing or liable under policies of assurance upon human life within British India, or granting annuities upon human life within British India. In the case of such a Company (hereinafter called a Life-assurance Company), the expression "debts," as so used, includes also contingent or prospective liability under policies and annuity and other existing contracts.

181.* Any application to the Court for the winding-up of a Company under this Act shall be by petition, which may be presented by the
Application for winding-up to be made by petition.

* Cf. s. 21 of the Life Assurance Companies Act, 1870 (Stat. 33 & 34 Vict., c. 61).

favour of any person claiming under the insolvent, whether as under-lessee or as mortgagee, except upon the terms of making such person subject to the same liabilities and obligations as the insolvent was subject to under the lease in respect of the property at the date when the insolvency petition was filed, and any under-lessee or mortgagee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and if there is no person claiming under the insolvent who is willing to accept an order upon such terms, the Court shall have power to vest the insolvent's interest in the property in any person liable, either personally or in a representative character, and either alone or jointly with the insolvent, to perform the lessee's covenants in such lease, freed and discharged from all estates, incumbrances, and interests created therein by the insolvent.

(2) The Court may, if it thinks fit, modify the terms prescribed by the foregoing proviso so as to make a person in whose behalf the vesting order may be made subject only to the same liabilities and obligations as if the lease had been assigned to him at the date when the insolvency petition was filed, and (if the case so requires) as if the lease had comprised only the property comprised in the vesting order.

67. Any person injured by the operation of a disclaimer
Persons injured by disclaimer may prove. under the foregoing provisions shall be deemed to be a creditor of the insolvent to the amount of the injury, and may accordingly prove the same as a debt under the insolvency.

68. (1) Subject to the provisions of this Act, the Official Assignee shall, with all convenient speed, realize the property of the insolvent, and for that purpose may—
Duty and powers of Official Assignee as to realisation.

(a) sell all or any part of the property of the insolvent ;

(b) give receipts for any money received by him ;

and may, by leave of the Court, do all or any of the following things, namely—

(c) carry on the business of the insolvent so far as may be necessary for the beneficial winding-up of the same ;

(d) institute, defend, or continue any suit or other legal proceeding relating to the property of the insolvent ;

the wife of a contributory, either before or after her marriage, or by, or in the name of, any trustee for such wife, or for the contributory, such share shall, for the purposes of this section, be deemed to have been held by, and registered in the name of, the contributory.

133. A winding-up of a Company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding-up.
 Commencement of winding-up by Court.

134. The Court may, at any time after the presentation of the petition for winding up a Company, grant injunction under this Act, and before making an order for winding up the Company, upon the application of the Company, or of any creditor or contributory of the Company, restrain further proceedings in any suit or proceeding against the Company, upon such terms as the Court thinks fit.

The Court may also, at any time after the presentation of such petition, and before the first appointment of liquidators, appoint provisionally an official liquidator of the estate and effects of the Company.

135. Upon hearing the petition, the Court may dismiss the same with or without costs, may adjourn the hearing conditionally or unconditionally, and may make any interim order or any other order that it deems just.
 Course to be pursued by Court on hearing petition.

136. When an order has been made for winding up a Company under this Act, no suit or other proceeding shall be proceeded with or commenced against the Company except with the leave of the Court, and subject to such terms as the Court may impose.
 Suits to be stayed after order for winding-up.

137 When an order has been made for winding up a Company under this Act, a copy of such order shall forthwith be forwarded by the Company to the Registrar of Joint-stock Companies, who shall make a minute thereof in his books relating to the Company.
 Copy of order to be forwarded to Registrar.

Such order shall be deemed to be notice of discharge to the servants of the Company, except when the business of the Company is continued.

(5) When the Official Assignee has declared a dividend, he shall send to each creditor who has proved a notice showing the amount of the dividend, and when and how it is payable, and, if required by any creditor, a statement in the prescribed form as to the particulars of the estate.

70. Where one partner in a firm is adjudged insolvent, a joint and separate pro-creditor, to whom the insolvent is indebted jointly with the other partners in the firm or any of them, shall not receive any dividend out of the separate property of the insolvent until all the separate creditors have received the full amount of their respective debts.

71. (1) In the calculation and distribution of dividends, the Official Assignee shall retain in his hands sufficient assets to meet —
Calculation of dividends.

(a) debts proveable in insolvency and appearing from the insolvent's statements or otherwise to be due to persons resident in places so distant that, in the ordinary course of communication, they have not had sufficient time to tender their proofs;

(b) debts proveable in insolvency, the subject of claims not yet determined;

(c) disputed proofs or claims; and

(d) the expenses necessary for the administration of the estate or otherwise.

(2) Subject to the provisions of sub-section (1), all money in hand shall be distributed as dividends.

72. Any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid, out of any money for the time being in the hands of the Official Assignee, any dividend or dividends which he may have failed to receive, before that money is applied to the payment of any future dividend or dividends, but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein.

73. (1) When the Official Assignee has realized all the property of the insolvent, or so much thereof as can, in his opinion, be realized without needlessly protracting the proceedings in insol-
Final dividend.

act hereby required or authorized to be done by the official liquidator is to be done by all or any one or more of such persons.

The Court may also determine whether any, and what, security is to be given by any official liquidator on his appointment.

If no official liquidator is appointed, or during any vacancy in such appointment, all the property of the Company shall be deemed to be in the custody of the Court.

A receiver shall not be appointed of assets in the hands of an official liquidator.

142. Any official liquidator may resign or be removed by the Court on due cause shown. Any vacancy in the office of an official liquidator appointed by the Court shall be filled up by the Court. There shall be paid to the official liquidator such salary or remuneration, by way of percentage or otherwise, as the Court may direct; and, if more liquidators than one are appointed, such remuneration shall be distributed amongst them in such proportions as the Court directs.

143. The official liquidator shall be described by the style of the official liquidator of the particular Company in respect of which he is appointed, and not by his individual name. He shall take into his custody, or under his control, all the property, effects, and actionable claims to which the Company is, or appears to be, entitled, and shall perform such duties in reference to the winding-up of the Company as may be imposed by the Court.

144. The official liquidator shall have power, with the sanction of the Court, to do the following things:—

- (a) to bring or defend any suit or prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the Company;
- (b) to carry on the business of the Company, so far as may be necessary for the beneficial winding-up of the same;
- (c) to sell the immoveable and moveable property of the Company by public auction or private contract, with power to transfer the whole thereof to any person or Company, or to sell the same in parcels;

PART IV.

OFFICIAL ASSIGNEES.

77. (1) The Chief Justice of each of the High Courts of Judicature at Fort William, Madras, and Bombay, and the Chief Judge of the Chief Court of Lower Burma, may, from time to time, appoint, substantively or temporarily, such person as he thinks fit to the office of Official Assignee of insolvent's estates for each of the said Courts respectively, and may, with the concurrence of a majority of the other Judges of the Court, remove the person for the time being holding that office for any cause appearing to the Court sufficient.

(2) Every Official Assignee shall give such security, and shall be subject to such rules, and shall act in such manner, as may be prescribed.

(3) Notwithstanding anything in sub-section (1), the persons, substantively or temporarily holding the office of Official Assignee immediately before the commencement of this Act in the Courts for the Relief of Insolvent Debtors at Calcutta, Madras, and Bombay, respectively, under the Indian Insolvency Act, 1848,* and in the Chief Court of Lower Burma under that Act as applied by the Lower Burma Courts Act, 1900,† shall, without further appointment for that purpose, become the Official Assignees, substantive or temporary, as the case may be, under this Act in the High Courts at Fort William, Madras and Bombay, and in the Chief Court of Lower Burma, respectively.

78. An Official Assignee may, for the purpose of affidavits, verifying proofs, petitions, or other proceedings under this Act, administer oaths.

79. (1) The duties of an Official Assignee shall have relation to the conduct of the insolvent as well as to the administration of his estate.

(2) In particular it shall be the duty of the Official Assignee—

(a) to investigate the conduct of the insolvent, and to report to the Court upon any application for discharge, stating whether there is reason to believe that the insolvent has committed any act which constitutes,

* Stat. 11 & 12 Vict., c. 21.

† Act VI. of 1900.

Provided that nothing herein contained shall be deemed to affect the rights, duties, and privileges of the Administrators-General of Bengal, Madras, and Bombay, respectively ;

(h) to do and execute all such other things as may be necessary for winding up the affairs of the Company and distributing its assets.

145. The Court may provide by any order that the official Discretion of official liquidator may exercise any of the above powers without the sanction or intervention of the Court ; and, where an official liquidator is provisionally appointed, may limit and restrict his powers by the order appointing him.

146. The official liquidator may, with the sanction of the Court, appoint an attorney or vakil to assist him in the performance of his duties :
Appointment of attorney or vakil to official liquidator.

Provided that, where the official liquidator is an attorney, he shall not appoint his partner, unless the latter consents to act without remuneration.

Ordinary Powers of Court.

147. As soon as may be, after making an order for winding up the Company, the Court shall settle a list of contributories, with power to rectify the register of members in all cases where such rectification is required in pursuance of section 58, and shall cause the assets of the Company to be collected and applied in discharge of its liabilities existing at the date of the said order.

148. In settling the list of contributories, the Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of, or being liable to the debts of, others.
Provision as to representative contributories.

149. The Court may, at any time after making an order for winding up a Company, require any contributory for the time being settled on the list of contributories, trustee, receiver, banker, or agent or officer of the Company to pay, deliver, convey, surrender, or transfer, forthwith, or within such time as the Court directs, to or into
Power of Court to require delivery of property.

85. (1) Subject to the provisions of this Act, and to the Discretionary powers and directions of the Court, the Official Assignee shall, in the administration of the property of the insolvent, and in the distribution thereof amongst his creditors, have regard to any resolution that may be passed by the creditors at a meeting.

(2) The Official Assignee may, from time to time, summon meetings of the creditors for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors, by resolution at any meeting, or the Court may direct, or whenever requested in writing to do so by one-fourth in value of the creditors who have proved.

(3) The Official Assignee may apply to the Court for directions in relation to any particular matter arising under the insolvency.

(4) Subject to the provisions of this Act, the Official Assignee shall use his own discretion in the management of the estate and its distribution among the creditors.

86. If the insolvent or any of the creditors or any other person is aggrieved by any act or decision of the Official Assignee, he may appeal to the Court, and the Court may confirm, reverse, or modify the act or decision complained of, and make such order as it thinks just.

87. (1) If any Official Assignee does not faithfully perform his duties, and duly observe all the requirements imposed on him by any enactment, rules, or otherwise, with respect to the performance of his duties, or if any complaint is made to the Court by any creditor in regard thereto, the Court shall enquire into the matter, and take such action thereon as may be deemed expedient.

(2) The Court may at any time require any Official Assignee to answer any enquiry made by it in relation to any insolvency in which he is engaged, and may examine him or any other person on oath concerning the insolvency.

(3) The Court may also direct an investigation to be made of the books and vouchers of the Official Assignee.

The Court may, in making a call, take into consideration the probability that some of the contributories upon whom the same is made may, partly or wholly, fail to pay their respective portions of the same.

152. The Court may order any contributory, purchaser, or other person from whom money is due to the Company, to pay the same into the Bank of Bengal, the Bank of Madras, or the Bank of Bombay, as the case may be, or any branch thereof respectively, to the account of the official liquidator instead of to the official liquidator; and such order may be enforced in the same manner as if it had directed payment to the official liquidator.

153. All moneys, bills, hundis, notes, and other securities paid and delivered into the Bank of Bengal, the Bank of Madras, or the Bank of Bombay, or any branch thereof respectively, in the event of a Company being wound up by the Court, shall be subject to such order and regulation for the keeping of the account of such moneys and other effects, and for the payment and delivery in, or investment and payment and delivery out of, the same as the Court may direct.

154. If any person made a contributory, as personal representative of a deceased contributory, makes default in paying any sum ordered to be paid by him, proceedings may be taken for administering the property of such deceased contributory, whether moveable or immoveable, or both, and of compelling payment thereof of the moneys due.

155. Any order made by the Court in pursuance of this Act upon any contributory shall, subject to the provisions herein contained for appealing against such order, be conclusive evidence that the moneys, if any, thereby appearing to be due, or ordered to be paid, are due, and all other pertinent matters stated in such order are to be taken to be truly stated as against all persons, and in all proceedings, whatsoever.

156. The Court may fix a certain day or certain days on or within which creditors of the Company are to prove their debts or claims, or to be excluded from the benefit of any distribution made before such debts are proved.

(6) Subject to rules, the Court may in any matter take the whole or any part of the evidence either *viva voce*, or by interrogatories, or upon affidavit, or by commission.

(7) For the purpose of approving a composition or scheme by joint debtors, the Court may, if it thinks fit, and on the report of the Official Assignee that it is expedient so to do, dispense with the public examination of one of the joint debtors if he is unavoidably prevented from attending the examination by illness or absence abroad.

(8) For the purposes of this Act, the Chief Court of Lower Burma shall have all the powers to punish for contempt of Court which are possessed by the High Courts of Judicature at Fort William, Madras, and Bombay respectively.

91. Where two or more insolvency petitions are presented against the same debtor or against joint debtors, or where joint debtors file separate petitions, the Court may consolidate the proceedings or any of them on such terms as the Court thinks fit.

92. Where the petitioner does not proceed with due diligence on his petition, the Court may substitute as petitioner any other creditor to whom the debtor is indebted in the amount required by this Act in the case of a petitioning creditor.

93. If a debtor by or against whom an insolvency petition has been presented dies, the proceedings in the matter shall, unless the Court otherwise orders, be continued as if he were alive.

94. The Court may, at any time, for sufficient reason, make an order staying the proceedings under an insolvency petition, either altogether or for a limited time, on such terms, and subject to such conditions, as the Court thinks just.

95. Any creditor whose debt is sufficient to entitle him to present an insolvency petition against all the partners in a firm may present a petition against any one or more partners in the firm without including the others.

cause such person to be apprehended and brought before the Court for examination.

The Court may require any such officer or person to produce any documents in his custody or power relating to the Company. Nevertheless, in cases where any person claims any lien on documents produced by him, such production shall be without prejudice to such lien, and the Court shall have jurisdiction in the winding up to determine all questions relating to such lien.

163. The Court may examine upon oath, either by word of mouth, or upon written interrogatories, any person appearing or brought before it in manner aforesaid concerning the affairs, dealings, estate, or effects of the Company, and may reduce into writing the answers of every such person, and require him to subscribe the same.

164. The Court may, at any time before or after it has made an order for winding up a Company, upon proof being given that there is probable cause for believing that any contributory to such Company is about to quit British India, or otherwise abscond, or to remove or conceal any of his goods or chattels, for the purpose of evading payment of calls, or for avoiding examination in respect of the affairs of the Company, cause such contributory to be arrested, and his books, papers, moneys, securities for moneys, goods, and chattels to be seized, and him and them to be safely kept until such time as the Court may order.

165. Any powers by this Act conferred on the Court shall be deemed to be in addition to, and not in restriction of, any other powers subsisting of instituting proceedings against any contributory, or the estate of any contributory, or against any debtor of the Company, for the recovery of any call or other sums due from such contributory or debtor, or his estate: and such proceedings may be instituted accordingly.

Enforcement of, and Appeal from, Orders.

166. All orders made by a Court under this Act may be enforced in the same manner in which decrees of such Court made in any suit pending therein may be enforced.

100. (1) A warrant of arrest issued by the Court may be executed in the same manner, and subject to the same conditions, as a warrant of arrest issued under the Code of Criminal Procedure, 1898,* may be executed.

(2) A warrant to seize any part of the property of an insolvent, issued by the Court under section 59, sub-section (1), shall be in the form prescribed, and sections 77 (2), 79, 82, 83, 84, and 102 of the said Code* shall, so far as may be, apply to the execution of such warrant.

(3) A search-warrant issued by the Court under section 59, sub-section (2), may be executed in the same manner, and subject to the same conditions, as a search-warrant for property supposed to be stolen may be executed under the said Code.*

PART VII.

LIMITATION.

101. The period of limitation for an appeal from any act or decision of the Official Assignee, or from an order made by an officer of the Court empowered under section 6, shall be twenty days from the date of such act, decision, or order, as the case may be.

PART VIII.

PENALTIES.

102. An undischarged insolvent obtaining credit to the extent of fifty rupees or upwards from any person without informing such person that he is an undischarged insolvent shall, on conviction by a Magistrate, be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

Punishment of insolvents for certain offences.

103. Any person adjudged insolvent who—

(a) fraudulently, with the intent to conceal the state of his affairs, or to defeat the objects of this Act,—

* Act V. of 1898.

when such seal is appended to any document made, issued, or signed under the provisions of this Part of this Act, or any official copy thereof.

171. The Judges of the District Courts, who sit at places more than twenty English miles from the usual place of sitting of the High Court, shall be Commissioners for the purpose of taking evidence under this Act in cases where any Company is wound up in a High Court; and it shall be lawful for the High Court to refer the whole or any part of the examination of any witnesses under this Act to any person hereby appointed Commissioner although such Commissioner is out of the jurisdiction of the Court that made the order or decree for winding up the Company.

Every such Commissioner shall, in addition to any power of summoning and examining witnesses, and requiring the production or delivery of documents, and certifying or punishing defaults by witnesses, which he might lawfully exercise as a Judge of a District Court, have, in the matter so referred to him, all the same powers of summoning and examining witnesses, and requiring the production or delivery of documents, and punishing defaults by witnesses, and allowing costs and charges, and expenses to witnesses, as the Court which made the order for winding up the Company has; and the examination so taken shall be returned or reported to such last-mentioned Court in such manner as it directs.

172. If any affidavit, affirmation, or declaration required to be sworn or made under the provisions, or for the purposes, of this Part of this Act, be lawfully sworn or made in British India, or in Great Britain, or Ireland, or in any colony, island, plantation, or place under the dominion of Her Majesty in foreign parts, before any Court, Judge, or person lawfully authorized to take and receive affidavits, affirmations, or declarations, or before any of Her Majesty's Consuls or Vice-Consuls in any foreign parts out of Her Majesty's dominions, all Courts, Judges, Justices, Commissioners, and persons acting judicially in British India shall take judicial notice of the seal or stamp or signature (as the case may be) of any such Court, Judge, person, Consul, or Vice-Consul attached, appended, or subscribed to any such affidavit, affirmation, or declaration, or to any other document to be used for the purposes of this Part of this Act.

105. Where an insolvent has been guilty of any of the offences specified in section 102 or section 103, Criminal liability after discharge or composition. he shall not be exempt from being proceeded against therefor by reason that he has obtained his discharge, or that a composition or scheme of arrangement has been accepted or approved.

PART IX.

SMALL INSOLVENCIES.

106. Where the Court is satisfied by affidavit or otherwise, or Summary administration in small cases. the Official Assignee reports to the Court, that the property of an insolvent is not likely to exceed in value three thousand rupees or such other less amount as may be prescribed, the Court may make an order that the insolvent's estate be administered in a summary manner, and thereupon the provisions of this Act shall be subject to the following modifications, namely—

- (a) no appeal shall lie from any order of the Court except by leave of the Court ;
- (b) no examination of the insolvent shall be held except on the application of a creditor or the Official Assignee ;
- (c) the estate shall, where practicable, be distributed in a single dividend ;
- (d) such other modifications as may be prescribed with the view of saving expense and simplifying procedure :

Provided that nothing in this section shall permit the modification of the provisions of this Act relating to the discharge of the insolvent.

(a) The Court may at any time, if it thinks fit, revoke an order for the summary administration of an insolvent's estate.

PART X.

SPECIAL PROVISIONS.

107. No insolvency petition shall be presented against any corporation or against any association or company registered under any enactment for the time being in force. Exemption of corporation, etc., from insolvency proceedings.

176. Notice of any special resolution or extraordinary resolution

Notice of resolution to be given by advertisement in the local official Gazette, and also in some newspaper (if any) circulating in the place where the registered office of the Company is situate.

Consequence of voluntary winding-up.

177. The following consequences shall ensue upon the voluntary winding-up of a Company :—

- (a) the assets of the Company shall be applied in satisfaction of its liabilities *pari passu* as they exist at the commencement of the winding-up, and, subject thereto, shall, unless the regulations of the Company otherwise provide, be distributed amongst the members according to their rights and interests in the Company;
- (b) liquidators shall be appointed for the purpose of winding up the affairs of the Company, and distributing the assets,
- (c) the Company, in general meeting, shall appoint such persons as it thinks fit to be liquidators, and may fix the remuneration to be paid to them;
- (d) if one person only is appointed, all the provisions herein contained in reference to several liquidators shall apply to him;
- (e) upon the appointment of liquidators, all the powers of the directors shall cease, except in so far as the Company in general meeting or the liquidators may sanction the continuance of such powers;
- (f) when several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined at the time of their appointment, or, in default of such determination, by any number not less than two;
- (g) the liquidators may, without the sanction of the Court, exercise all powers by this Act given to the official liquidators;
- (h) the liquidators may exercise the powers heretofore given to the Court of settling the list of contributories of the Company, and any list so settled shall be

incurred by him in and about the debtor's estate; and those claims shall be deemed a preferential debt under the order, and be payable in full, out of the debtor's estate, in priority to all other debts.

(4) If, on the administration of a deceased debtor's estate, any surplus remains in the hands of the Official Assignee after payment in full of all the debts due from the debtor, together with the costs of the administration and interest as provided by this Act in case of insolvency, such surplus shall be paid over to the legal representative of the deceased debtor's estate, or dealt with in such other manner as may be prescribed.

110. (1) After notice of the presentation of a petition under section 108, no payment or transfer of property made by the legal representative shall operate as a discharge to him as between himself and the Official Assignee.

(2) Save as aforesaid nothing in section 108 or section 109 or this section shall invalidate any payment made or act or thing done in good faith by the legal representative, or by a District Judge acting under the powers conferred on him by section 64 of the Administrator-Generals Act, 1874,* before the date of the order for administration.

111. The provisions of sections 108, 109, and 110 shall not apply to any case in which probate or letters of administration to the estate of a deceased debtor have been granted to an Administrator-General.

PART XI.

RULES.

112. (1) The Courts having jurisdiction under this Act may from time to time make rules for carrying into effect the objects of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for and regulate—

(a) the fees and percentages to be charged under this Act and the manner in which the same are to be collected and accounted for, and the account to which they are to be paid;

* Act II. of 1874.

180. Any arrangement, which a Company about to be wound up voluntarily, or in the course of being wound up voluntarily, shall have entered into with its creditors, shall be binding on the Company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors, subject to such right of appeal as is hereinafter mentioned.

181. Any creditor or contributory of a Company that has, in manner aforesaid, entered into any arrangement with its creditors, may, within three weeks from the date of the completion of such arrangement, appeal to the Court against such arrangement, and the Court may thereupon, as it thinks just, amend, vary, or confirm the same.

182. Where a Company is being wound up voluntarily, the liquidators or any contributory of the Company may apply to the Court to determine any question arising in the matter of such winding-up, or to exercise, as respects the enforcing of calls, or in respect of any other matter, all or any of the powers which the Court might exercise if the Company were being wound up by the Court. Any such application may be made by motion. The Court, if satisfied that the determination of such question, or the required exercise of power, will be just and beneficial, may accede, wholly or partially, to such application, on such terms and subject to such conditions as the Court thinks fit, or it may make such other order or decree on such application as the Court thinks just.

183. Where a Company is being wound up voluntarily, the liquidators may, from time to time call general meeting. during the continuance of such winding-up, summon general meetings of the Company for the purpose of obtaining the sanction of the Company by special resolution or extraordinary resolution, or for any other purposes they think fit.

In the event of the winding-up continuing for more than one year, the liquidators shall summon a general meeting of the Company at the end of the first year, and of each succeeding year from the commencement of the winding-up, or as soon thereafter as may be convenient, and shall lay before such meeting an account showing their acts and dealings, and the manner in which the winding-up has been conducted, during the preceding year.

(q) the procedure to be followed in the case of estates to be administered in a summary manner ;

(r) the procedure to be followed in the case of estates of deceased persons to be administered under this Act.

113. Rules made under the provisions of this Part shall be subject, in the case of the High Court of Judicature at Fort William in Bengal, to the previous sanction of the Governor-General in Council, and, in the case of any other Court, of the Local Government.

114. Rules so made and sanctioned shall be published in the *Gazette of India*, or in the local official Gazette, as the case may be, and shall thereupon have the same force and effect with regard to proceedings under this Act in the Court which made them as if they had been enacted in this Act.

PART XII.

SUPPLEMENTAL.

115. (1) Every transfer, mortgage, assignment, power-of-attorney, proxy-paper, certificate, affidavit, etc., under this Act, or writing whatsoever before, or under any order of, the Court, and any copy thereof, shall be exempt from payment of any stamp or other duty whatsoever.

(2) No stamp-duty or fee shall be chargeable for any application made by the Official Assignee to the Court under this Act, or for the drawing and issuing of any order made by the Court on such application.

116. (1) A copy of the official Gazette containing any notice inserted in pursuance of this Act shall be evidence of the facts stated in the notice.

(2) A copy of the official Gazette containing any notice of an order of adjudication shall be conclusive evidence of the order having been duly made, and of its date.

117. Any affidavit may be used in a Court having jurisdiction under this Act if it is sworn—

Swearing of affidavits.

188. All costs, charges, and expenses properly incurred in the voluntary winding-up of a Company, including the remuneration of the liquidators, shall be payable out of the assets of the Company in priority to all other claims.

189. The voluntary winding-up of a Company shall not be a bar to the right of any creditor of such Company to have the same wound up by the Court if the Court is of opinion that the rights of such creditor will be prejudiced by a voluntary winding-up.

190. Where a Company is in course of being wound up voluntarily, and proceedings are taken for the purpose of having the same wound up by the Court, the Court may, if it thinks fit, notwithstanding that it makes an order directing the Company to be wound up by the Court, provide in such order, or in any other order, for the adoption of all or any of the proceedings taken in the course of the voluntary winding-up.

Winding-up subject to the Supervision of the Court.

191. When a resolution has been passed by a Company to wind up voluntarily, the Court may make an order directing that the voluntary winding-up shall continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories, or others to apply to the Court, and generally upon such terms and subject to such conditions, as the Court thinks just.

192. A petition praying wholly or in part that a voluntary winding-up shall continue, but subject to the supervision of the Court, and which winding-up is hereinafter referred to as a winding-up subject to the supervision of the Court, shall, for the purpose of giving jurisdiction to the Court over suits, be deemed to be a petition for winding-up the Company by the Court.

193. The Court may, in determining whether a Company is to be wound up altogether by the Court, or subject to the supervision of the Court in the appointment of a liquidator or of liquidators, and in

120. Save as herein provided, the provisions of this Act relating to the remedies against the property of a debtor, the priorities of debts, the effect of a composition or scheme of arrangement, and the effect of a discharge, shall bind the Crown.

121. Nothing in this Act, or in any transfer of jurisdiction effected thereby, shall take away or affect any right of audience that any person may have had immediately before the commencement of this Act, or shall be deemed to confer such right in insolvency matters on any person who had not a right of audience before the Courts for the Relief of Insolvent Debtors.

122. Where the Official Assignee has under his control any dividend which has remained unclaimed for fifteen years from the date of declaration or such less period as may be prescribed, he shall pay the same to the account and credit of the Government of India, unless the Court otherwise directs.

123. Any person claiming to be entitled to any moneys paid to the account and credit of the Government of India under section 122 may apply to the Court for an order for payment to him of the same; and the Court, if satisfied that the person claiming is entitled, shall make an order for payment to him of the sum due :

Provided that, before making an order for the payment of a sum which has been carried to the account and credit of the Government of India, the Court shall cause a notice to be served on such officer as the Governor-General in Council may appoint in this behalf, calling on the officer to show cause, within one month from the date of the service of the notice, why the order should not be made.

124. (1) No person shall, as against the Official Assignee, be entitled to withhold possession of the books of accounts belonging to the insolvent, or to set up any lien thereon.

(2) Any creditor of the insolvent may, subject to the control of the Court, and on payment of such fee, if any, as may be prescribed, inspect at all reasonable times, personally or by agent, any such books in the possession of the Official Assignee.

be deemed to mean the liquidator conducting the winding-up subject to the supervision of the Court.

196. Where an order has been made for the winding-up of a Company subject to the supervision of the Court, and such order is afterwards superseded by an order directing the Company to be wound up compulsorily, the Court may, in such last-mentioned order, or in any subsequent order, appoint the voluntary liquidators or any of them, either provisionally or permanently, and either with or without the addition of any other person, to be official liquidators.

Supplemental Provisions.

197. Where any Company is being wound up by the Court or subject to the supervision of the Court, all dispositions of the property of the Company, and every transfer of shares or alteration in the status of the members of the Company, made between the commencement of the winding-up and the order for winding-up, shall, unless the Court otherwise orders, be void.

198. Where any Company is being wound up, all books, accounts, and documents of the Company and of the liquidators shall, as between the contributories of the Company, be *prima-facie* evidence of the truth of all matters purporting to be therein recorded.

199. Where any Company has been wound up under this Act, and is about to be dissolved, the books, accounts, and documents of the Company, and of the liquidator, may be disposed of in the following way, that is to say, where the Company has been wound up by, or subject to the supervision of, the Court, in such way as the Court directs, and where the Company has been wound up voluntarily, in such way as the Company, by an extraordinary resolution, directs.

But, after the lapse of five years from the date of such dissolution, no responsibility shall rest on the Company or the liquidators, or any one to whom the custody of such books, accounts, and documents has been committed, by reason that the same or any of them cannot be made forthcoming to any party or parties claiming to be interested therein.

sonally, or sent by prepaid post letter, as may be convenient. The Official Assignee may, if he thinks fit, also publish the time and place of any meeting in any local newspaper, or in the local official Gazette.

4. It shall be the duty of the insolvent to attend any meeting which the Official Assignee may, by notice, require him to attend and any adjournment thereof. Such notice shall be either delivered to him personally or sent to him at his address by post at least three days before the date fixed for the meeting.

5. The proceedings held and resolutions passed at any meeting shall, unless the Court otherwise orders, be valid notwithstanding that any creditor has not received the notice sent to him.

6. A certificate of the Official Assignee, that the notice of any meeting has been duly given, shall be sufficient evidence of such notice having been duly sent to the person to whom the same was addressed.

7. Where, on the request of creditors, the Official Assignee summons a meeting, there shall be deposited with the written request the sum of five rupees for every twenty creditors for the costs of summoning the meeting, including all disbursements : Provided that the Official Assignee may require such further sum to be deposited as in his opinion shall be sufficient to cover the costs and expenses of the meeting.

8. The Official Assignee shall be the Chairman of any meeting.

9. A creditor shall not be entitled to vote at a meeting unless he has duly proved a debt proveable in insolvency to be due to him from the insolvent, and the proof has been duly lodged one clear day before the time appointed for the meeting.

10. A creditor shall not vote at any such meeting in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained.

11. For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof the particulars of his security, the

201. The liquidator may, with the sanction of the Court where the Company is being wound up
 General scheme of liquidation may be sanctioned. by the Court or subject to the supervision of the Court, and with the sanction of an extraordinary resolution of the Company where the Company is being wound up altogether voluntarily, pay any classes of creditors in full, or make such compromise or other arrangement as the liquidator may deem expedient with creditors or persons claiming to be creditors, or persons having, or alleging themselves to have, any claim, present or future, whereby the Company may be rendered liable.

202. The liquidator may, with the sanction of the Court where the Company is being wound up
 Power to compromise. by the Court, or subject to the supervision of the Court, and with the sanction of an extraordinary resolution of the Company where the Company is being wound up altogether voluntarily, compromise all calls and liabilities to calls, debts, and liabilities capable of resulting in debts, and all claims, whether present or future, subsisting, or supposed to subsist, between the Company and any contributory or alleged contributory, or other debtor or persons apprehending liability to the Company, and all questions in any way relating to or affecting the assets of the Company or the winding-up of the Company generally upon such terms as may be agreed upon, with power for the liquidator to take any security for the discharge of such debts or liabilities, and to give complete discharges in respect of all or any such calls, debts, or liabilities.

208.* Where any compromise or arrangement shall be proposed between a Company which is, at the commencement of this Act or afterwards, in the course of being wound up, either voluntarily, or by or under the supervision of the Court, and the creditors of such Company or any class of such creditors, it shall be lawful for the Court, in addition to any other of its powers, on the application in a summary way of any creditor or the liquidator, to order that a meeting of such creditors or class of creditors shall be summoned in such manner as the Court shall direct; and, if a majority in number, representing three-fourths in value, of such creditors or class of creditors, present either in person or by proxy

* Cf s 2 of the Life Assurance Companies Act, 1870 (Stat. 33 & 34 Vict., c. 61).

case the instrument of proxy shall state the relation in which the person to act thereunder stands to the creditor.

19. A proxy shall not be used unless it is deposited with the Official Assignee one clear day before the time appointed for the meeting at which it is to be used.
 Proxy to be deposited one day before date of meeting.

20. A creditor may appoint the Official Assignee as proxy. Official Assignee to act as his proxy.

21. The Official Assignee may adjourn the meeting from time to time, and from place to place, and no notice of the adjournment shall be necessary.
 Adjournment of meeting.

22. The Official Assignee shall draw up a minute of the proceedings at the meeting, and shall sign the same.
 Minute of proceedings.

THE SECOND SCHEDULE.

(See section 48.)

PROOF OF DEBTS.

Proofs in Ordinary Cases.

1. Every creditor shall lodge the proof of his debt as soon as may be after the making of an order of adjudication.
 Time for lodging proof.

2. A proof may be lodged by delivering or sending by post in a registered letter to the Official Assignee an affidavit verifying the debt.
 Mode of lodging proof.

3. The affidavit may be made by the creditor himself, or by some person authorized by or on behalf of the creditor. If made by a person so authorized, it shall state his authority and means of knowledge.
 Authority to make affidavit.

4. The affidavit shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers, if any, by which the same can be substantiated. The Official Assignee may at any time call for the production of the vouchers.
 Contents of affidavit.

currently with, any resolution for winding up the Company or for appointing liquidators; but, if an order be made within a year for winding up the Company, by or subject to the supervision of the Court, such resolution shall not be of any validity unless it is sanctioned by the Court.

205. The price to be paid for the purchase of the interest of any dissentient member may be determined by agreement. If the parties dispute about the same, such dispute shall be settled by arbitration under the provisions next hereinafter contained.

206. When any dispute so directed to be settled by arbitration has arisen, then, unless both parties concur in the appointment of a single arbitrator, each party, on the request of the other party, shall, by writing under his hand, nominate and appoint an arbitrator to whom such dispute shall be referred.

After any such appointment has been made, neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as such revocation.

If, for the space of fourteen days after any such dispute has arisen, and after a request in writing has been served by the one party on the other party to appoint an arbitrator, such last-mentioned party fail to appoint such arbitrator, then, upon such failure, the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine the matters in dispute; and, in such case, the award or determination of such single arbitrator shall be final.

207. If, before the matters so referred are determined, any arbitrator appointed by either party die, or become incapable, or refuse, or for seven days neglect, to act as arbitrator, the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place; and, if, for the space of seven days after notice in writing from the other party for that purpose, he fail to do so, the remaining or other arbitrator may proceed *ex parte*; and every arbitrator so substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death, refusal, or disability as aforesaid.

Provided that the creditor may at any time, by notice in writing, require the Official Assignee to elect whether he will or will not exercise his power of redeeming the security, or requiring it to be realized, and if the Official Assignee does not, within six months after receiving the notice, signify in writing to the creditor his election to exercise the power, he shall not be entitled to exercise it; and the equity of redemption, or any other interest in the property comprised in the security which is vested in the Official Assignee, shall vest in the creditor, and the amount of his debt shall be reduced by the amount at which the security has been valued.

13. Where a creditor has so valued his security, he may at any time amend the valuation and proof on showing, to the satisfaction of the Official Assignee or the Court, that the valuation and proof were made *bonâ fide* on a mistaken estimate, or that the security has diminished or increased in value since its previous valuation; but every such amendment shall be made at the cost of the creditor, and upon such terms as the Court shall order, unless the Official Assignee shall allow the amendment without application to the Court.

14. Where a valuation has been amended in accordance with the foregoing rule, the creditor shall forth with repay any surplus dividend which he has received in excess of that to which he would have been entitled on the amended valuation, or, as the case may be, shall be entitled to be paid, out of any money for the time being available for dividend, any dividend or share of dividend which he has failed to receive by reason of the inaccuracy of the original valuation before that money is made applicable to the payment of any future dividend, but he shall not be entitled to disturb the distribution of any dividend declared before the date of the amendment.

15. If a creditor, after having valued his security, subsequently realizes it, or if it is realized under the provisions of rule 12, the net amount realized shall be substituted for the amount of any valuation previously made by the creditor, and shall be treated in all respects as an amended valuation made by the creditor.

16. If a secured creditor does not comply with the foregoing rules, he shall be excluded from all share in any dividend.

done by or against any Company, be deemed, in the event of such Company being wound up under this Act, to have been made or done by way of undue or fraudulent preference of the creditors of such Company, and shall be invalid accordingly.

For the purposes of this section, the making of an application for winding up a Company shall, in the case of a Company being wound up by the Court, or subject to the supervision of the Court, and a resolution for winding up the Company shall, in the case of a voluntary winding-up, be deemed to correspond with the act of insolvency in the case of an individual trader; and any conveyance or assignment made by any Company formed under this Act of all its estate and effects to trustees, for the benefit of all its creditors, shall be void.

214. Where, in the course of the winding-up of any Company under this Act, it appears that any past or present director, manager, official or other liquidator, or any officer of such Company, has misapplied, or retained in his own hands, or become liable or accountable for, any moneys of the Company, or been guilty of any misfeasance or breach of trust in relation to the Company, the Court may, on the application of any liquidator, or of any creditor or contributory, of the Company, notwithstanding that the offence is one for which the offender is criminally responsible, examine into the conduct of such director, manager, or other officer, and compel him to repay any moneys so misapplied or retained, or for which such officer has become liable or accountable, together with interest after such rate as the Court thinks just, or to contribute such sums of money to the assets of the Company by way of compensation in respect of such misapplication, retainer, misfeasance, or breach of trust, as the Court thinks just.

Explanation I.—The banker of a Company is not, as such, an officer within the meaning of this section.

Explanation II.—Proceedings cannot be taken under this section against the representatives of a deceased officer.

215. If any director, officer, or contributory of any Company wound up under this Act destroys, mutilates, alters, falsifies, or fraudulently secretes any books, papers, writings, or securities, or makes, or is privy to the making of, any false or fraudulent entry in any register book of account or other document belonging to the Company,

the surplus of the sale moneys (if any) shall then be paid to the Official Assignee. But, if the moneys to arise from such sale are insufficient to pay and satisfy what is so found due to such mortgagee, then he shall be entitled to prove as a creditor for such deficiency, and receive dividends thereon rateably with the other creditors, but so as not to disturb any dividend then already declared.

21. For the better taking of such inquiries and accounts, and making a title to the purchaser, all
 Proceedings on inquiry. parties may be examined by the Court upon interrogatories or otherwise as the Court thinks fit, and shall produce before the Court upon oath all deeds, papers, books, and writings in their respective custody or power relating to the estate or effects of the insolvent as the Court directs.

Periodical Payments.

22. When any rent or other payment falls due at stated periods, and the order of adjudication is made at
 Periodical payments. any time other than one of those periods, the person entitled to the rent or payment may prove for a proportionate part thereof up to the date of the order as if the rent or payment grew due from day to day.

Interest.

23. (1) On any debt or sum certain whereon interest is not reserved or agreed for, and which is over-
 Interest. due when the debtor is adjudged an insolvent, and which is provable under this Act, the creditor may prove for interest at a rate not exceeding six per centum per annum—

(a) if the debt or sum is payable by virtue of a written instrument at a certain time, from the time when such debt or sum was payable to the date of such adjudication; or,

(b) if the debt or sum is payable otherwise, from the time when a demand in writing has been made giving the debtor notice that interest will be claimed from the date of the demand until the time of payment to the date of such adjudication.

(2) Where a debt which has been proved in insolvency includes interest or any pecuniary consideration in lieu of interest,

may transfer the same to such other Court, and thereupon the winding-up shall proceed in such other District Court.

PART V.

REGISTRATION-OFFICE.

220. The registration of Companies under this Act shall be conducted as follows (that is to say):—

- (a) The Local Government may, after the sanction of the Governor-General in Council to the creation of any such offices shall have been obtained, from time to time, appoint* such Registrars, Assistant Registrars, clerks, and servants as it may think necessary for the registration of Companies under this Act, and remove them at pleasure:
- (b) The Local Government may make such regulations† as it thinks fit with respect to the duties to be performed by any such Registrars, Assistant Registrars, clerks, and servants as aforesaid:

* For appointments made under the power conferred by this section in—

- (1) Assam, *see* Assam List of Local Rules and Orders, Ed 1893, p 181,
- (2) Bombay, *see* Bom Government Gazette, 1897, Pt. I, p. 1803,
- (3) Coorg, *see* Coorg Gazette, 1904, Pt I, p 30,
- (4) Eastern Bengal and Assam, *see* E B & Assam Gazette, 1908 Pt. I, p. 1143,
- (5) United Provinces of Agra and Oudh, *see* U. P. Local R and O, Vol I,
- (6) Burma, *see* Burma R. Manual, Vol I, Bur. Gazette, 1907, Pt I, p. 24,
- (7) N-W. F Province, *see* Gazette of India, 1901, Pt. II, p 1304,
- (8) Madras, *see* Mad Local. R. and O, Vol. I.

† For regulations under this section in—

- (1) Assam, *see* Assam Local R and O.,
- (2) Bengal, *see* Ben Local Stat R and O, Vol. II ;
- (3) Bombay, *see* Bom Local R and O.,
- (4) Burma, *see* Bur R. M., Vol I, Bur Gazette, 1907, Pt I, p. 133 ;
- (5) Central Provinces, *see* C P Local R and O.,
- (6) Madras, *see* Mad Local R and O, Vol I,
- (7) Punjab, *see* Punjab Gazette, 1883, Pt I, p 489,
- (8) United Provinces, *see* U P Local R and O, Vol I.

THE THIRD SCHEDULE.

(See section 127.)

ENACTMENTS REPEALED.

Year.	No.	Short title.	Extent of repeal.
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I.—Statute.

1848	11 & 12 Vict, c. 21.	The Indian Insolven- cy Act, 1848	So much as has not been re- pealed.
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II.—Acts of the Governor-General in Council.

1841	XXVII.	The Insolvent Es- tates (Unclaimed Dividends) Act, 1841.	So much as has not been re- pealed.
1898	X	The Indian Insol- vency Rules Act, 1898	Sections 2 and 3.
1900	VI	The Lower Burma Courts Act.	Section 8, sub-section (1), clause (d), and sub-section (2), and, in section 17, in sub-section (1), the words "an official assignee", and, in sub-sec- tions (2) and (4), the words "official assignee."
1908	V.	The Code of Civil Procedure, 1908.	Section 120, sub-section (2).

- (g) There shall be paid, to any Registrar, Assistant Registrar, clerk, or servant that may hereafter be employed in the registration of Joint-stock Companies, such salaries as the Local Government may, with the sanction of the Governor-General in Council, direct:
- (h) Whenever any act is herein directed to be done to or by the Registrar of Joint-stock Companies, such act shall, until the Local Government otherwise directs, be done to or by the existing Registrar of Joint-stock Companies, or, in his absence, to or by such person as the Local Government may, for the time being, authorize. But, in the event of the Local Government altering the constitution of the existing registry-office, such act shall be done to or by such officer or officers, and at such place or places with reference to the local situation of the registered offices of the Companies to be registered, as the Local Government may appoint.

PART VI

APPLICATION OF ACT TO COMPANIES REGISTERED UNDER THE JOINT-STOCK COMPANIES ACTS

221. Subject as hereinafter mentioned, this Act, with the exception of Table A in the First Schedule, shall apply to Companies formed under Act XIX. of 1857 or VII. of 1860, formed and registered under Act No. XIX. of 1857 and Act No. VII. of 1860,* or either of them, in the same manner, in the case of a limited Company, as if such Company had been formed and registered under this Act as a Company limited by shares, and, in the case of a Company other than a limited Company, as if such Company had been formed and registered as an unlimited Company under this Act, with this qualification that, wherever reference is made expressly or impliedly to the date of registration, such date shall be deemed to refer to the date at which such Companies were respectively re-

* Acts XIX. of 1857 and VII. of 1860 have been repealed by Act X. of 1866, s. 219. Table B in the Schedule to Act XIX. of 1857, however, remains in force (*see* s. 2, *supra*) and is printed, *supra*, as Appendix I to this Act.

ACT NO. V. OF 1881.

The Probate and Administration Act, 1881.

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225. The following regulations shall be observed with respect to the registration of Companies under this Part of this Act (that is to say):—

- (a) No Company having the liability of its members limited by Act of Parliament or Act of the Governor-General in Council other than this Act, or by Letters Patent, and not being a Joint-stock Company as hereinafter defined, shall register under this Act in pursuance of this Part thereof;
- (b) No Company having the liability of its members limited by Act of Parliament or Act of the Governor-General in Council other than this Act, or by Letters Patent, shall register under this Act in pursuance of this Part thereof as an unlimited Company, or as a Company limited by guarantee.
- (c) No life-assurance Company existing at the time of the commencement of this Act, and no Company that is not a Joint-stock Company as hereinafter defined, shall, in pursuance of this Part of this Act, register under this Act as a Company limited by shares :
- (d) No Company shall register under this Act in pursuance of this Part thereof unless an assent to its so registering is given by a majority of such of its members as may be present personally, or by a proxy in cases where proxies are allowed by the regulations of the Company, at some general meeting summoned for the purpose :
- (e) Where a Company, not having the liability of its members limited by Act of Parliament or Act of the Governor-General in Council, or by Letters Patent, is about to register as a limited Company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present,

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(b) A copy of any Act of Parliament, or Act of the Governor-General in Council, Royal Charter, Letters Patent, deed of settlement, contract of co-partnery, or other instrument constituting or regulating the Company.

(c) If any such Joint-stock Company is intended to be registered as a limited Company, the above list and copy shall be accompanied by a statement specifying the following particulars (that is to say):—

the nominal capital of the Company and the number of shares into which it is divided;

the number of shares taken and the amount paid on each share;

the name of the Company, with the addition of the word "limited" as the last word thereof;

with the addition, in the case of a Company intended to be registered as a Company limited by guarantee, of the resolution declaring the amount of the guarantee.

228. Previously to the registration, in pursuance of this Part of this Act, of any Company not being a Joint-stock Company, there shall be delivered to the Registrar a list showing the names, addresses, and occupations of the directors or other managers (if any) of the Company, also a copy of any Act of Parliament, Act of the Governor-General in Council, Letters Patent, deed of settlement, contract of co-partnery, or other instrument constituting or regulating the Company, with the addition, in the case of a Company intended to be registered as a Company limited by guarantee, of the resolution declaring the amount of the guarantee.

229. Where a Joint-stock Company authorized to register under this Act has had the whole or any portion of its capital converted into stock, such Company shall, as to the capital so converted, instead of delivering to the Registrar a statement of shares, deliver to the Registrar a statement of the amount of stock belonging to the Company, and the names of the persons

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to its being registered as a limited Company, the liability of the shareholders was limited by some Act of Parliament or Act of the Governor-General in Council, or by Letters Patent.

284. Any Company authorized by this Part of this Act to register with limited liability shall, for the purpose of obtaining registration with limited liability, change its name by adding thereto the word "limited."

285. Upon compliance with the requisitions in this Part of this Act contained with respect to registration, and on payment of such fees, if any, as are payable under the Tables marked B and C in the First Schedule hereto, the Registrar shall certify under his hand that the Company so applying for registration is incorporated as a Company under this Act, and, in the case of a limited Company, that it is limited; and thereupon such Company shall be incorporated, and shall have perpetual succession and a common seal.

286. A certificate of incorporation given at any time to any Company registered in pursuance of this Part of this Act shall be conclusive evidence that all the requisitions herein contained in respect of registration under this Act have been complied with, and that the Company is authorized to be registered under this Act as a limited or unlimited Company, as the case may be; and the date of incorporation mentioned in such certificate shall be deemed to be the date at which the Company is incorporated under this Act.

287. All such property, moveable and immoveable, including all interests and rights in, to, and out of property, moveable and immoveable, and including obligations and actionable claims, as may belong to, or be vested in, the Company at the date of its registration under this Act, shall, on registration, pass to, and vest in, the Company as incorporated under this Act for all the estate and interest of the Company therein.

288. The registration in pursuance of this Part of this Act of any Company shall not affect or prejudice the liability of such Company to have enforced against it, or its right to enforce, any debt or obligation incurred by it.

[7]
ACT NO. V. OF 1881.*

The Probate and Administration Act, 1881.

RECEIVED THE G.-G.'S ASSENT ON THE 21ST JANUARY 1881.

An Act to provide for the Grant of Probates of Wills and Letters of Administration to the Estates of certain Deceased Persons.

WHEREAS it is expedient to provide for the grant of probate of wills and letters of administration to the estates of deceased persons in cases to which the Indian Succession Act, 1865,† does not apply; It is hereby enacted as follows:—

Preamble.

CHAPTER I

PRELIMINARY.

Short title.

Local extent.

Commencement.

1. This Act may be called the Probate and Administration Act, 1881: It applies to the whole of British India;

and it shall come into force on the first day of April 1881.

* For Statement of Objects and Reasons, see *Gazette of India*, 1879, Pt. V, p. 763; for the First Report of the Select Committee, see *ibid*, 1880, Pt. V., p. 35; for Discussions in Council, see *ibid*, 1879, Supplement, pp. 593 and 743; 1880, pp. 515, 556; and *ibid*, 1881, pp. 10, 47, and 87. Act V of 1881 has been declared in force in the town of Mandalay by the Upper Burma Laws Regulation (I. of 1890), s. 3; and ss. 153 and 154 of the Act have been declared in force in the Santhal Parganas by the British Baluchistan Laws Regulation (III. of 1872), s. 3, as amended by the Santhal Parganas Settlement Regulation (III. of 1886), s. 2. It has been declared, under s. 3 (a) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following deregulated Scheduled Districts in the Chntia Nagpur Division, namely, the Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singhbhum.—See *Gazette of India*, 1881, Pt. L, p. 504. (The District of Lohardaga included at this time the Palaman District, which was separated in 1894.)

† It has been extended, under s. 5 of the same Act, to the whole of Upper Burma except the Shan States.—See *Burma Gazette* 1893, Pt. I, p. 154.

† Act X. of 1865.

(d) That no Company shall have power, without the sanction of the Governor-General in Council, to alter any provision contained in any Letters Patent relating to the Company :

(e) In the event of the Company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the Company contracted prior to registration, who is liable to pay, or contribute to the payment of, any debt or liability of the Company contracted prior to registration, or to pay, or contribute to the payment of, any sum for the adjustment of the rights of the members amongst themselves in respect of any such debt or liability, or to pay, or contribute to the payment of, the costs, charges, and expenses of winding up the Company, so far as relates to such debts or liabilities as aforesaid. Every such contributory shall be liable to contribute, to the assets of the Company in the course of the winding-up, all sums due from him in respect of any such liability as aforesaid. In the event of the death or insolvency of any such contributory as last aforesaid, the provisions hereinbefore contained with respect to the representatives, heirs, and devisees of deceased contributories, and with reference to the assignees of insolvent contributories, shall apply :

(f) Nothing herein contained shall authorize any Company to alter any such provisions contained in any deed of settlement, contract of co-partnery, Letters Patent, or other instrument constituting or regulating the Company, as would, if such Company had originally been formed under this Act, have been contained in the memorandum of association, and are not authorized to be altered by this Act :

But nothing herein contained shall derogate from any power of altering its constitution or regulations which may be vested in any Company registering under this Act in pursuance of this Part thereof by virtue of any Act of Parliament, Act of the Governor-General in Council, deed of settlement, contract of co-partnery, Letters Patent, or other instrument constituting or regulating the Company:

Interpretation-clause.

3.* In this Act, unless there be something repugnant in the subject or context,—

“province” includes any division of British India, having a Court of the last resort:

“minor” means any person subject to the Indian Majority Act, 1875,† who has not attained his majority within the meaning

in the Punjab—the Chief Court, throughout the territories administered by the Lieutenant-Governor of the Punjab; all District Judges, as defined in the Act, within the said territories; and such Judicial Officers as the Chief Court may, from time to time, appoint as District Delegates (see *Punjab Gazette*, 1881, Pt. I, p. 483),

in Madras—the High Court at Madras, throughout the territories subject to the Governor in Council; all District Judges, as defined in the Act, within the said territories, and such Judicial Officers as the High Court may, from time to time, appoint as Delegates (see *Madras List of Local Rules and Orders*, Ed 1898, p 161),

in the Central Provinces—the Judicial Commissioner, throughout the territories under the administration of the Chief Commissioner, and all Deputy Commissioners within those territories (see *Central Provinces List of Local Rules and Orders*, Ed. 1896, p 97),

in Coorg—the Court of the Judicial Commissioner and the Court of the Commissioner (see *Coorg District Gazette*, 1889, Pt. I, p. 50);

in Bombay—the High Court at Bombay, throughout the territories subject to the Governor in Council, all District Judges, as defined in the Act, within the said territories; and such Judicial Officers as the High Court may, from time to time, appoint as District Delegates (see *Bombay List of Local Rules and Orders*, Ed 1896, Vol. I, p. 252),

in Ajmere-Merwara—the Court of the Chief Commissioner and the Court of the Commissioner (see *Gazette of India*, 1889, Pt. II, p. 534);

in the N.-W. Provinces and Oudh—the High Court at Allahabad, throughout the territories subject to the Lieutenant-Governor; the Judicial Commissioner of Oudh, throughout the territories subject to the Chief Commissioner; all District Judges, as defined in the Act, within the N.-W. Provinces and Oudh, and such Judicial Officers as the High Court or the Judicial Commissioner may, from time to time, appoint as District Delegates (see *N.-W. Provinces and Oudh List of Local Rules and Orders*, Ed 1894, Pt. II, p 48),

in Upper Burma. the Court of the Judicial Commissioner and all District Courts (see *Burma Gazette*, 1897, Pt. I, p. 289).

* Compare Act X. of 1865, s. 3.

† Act IX. of 1875.

of the winding-up of such Company, be deemed to be the registered office of the Company :

(2.) No unregistered Company shall be wound up under this Act voluntarily, or subject to the supervision of the Court :

(3.) The circumstances under which an unregistered Company may be wound up are as follow (that is to say) :—

(a) whenever the Company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs ;

(b) whenever the Company is unable to pay its debts ;

(c) whenever the Court is of opinion that it is just and equitable that the Company should be wound up :

(4.) An unregistered Company shall for the purposes of this Act, be deemed to be unable to pay its debts—

(a) whenever a creditor, to whom the Company is indebted, by assignment or otherwise, in a sum exceeding five hundred rupees then due, has served on the Company, by leaving the same at the principal place of business of the Company, or by delivering to the secretary or some director or principal officer of the Company, or by otherwise serving the same in such manner as the Court may approve or direct, a demand under his hand requiring the Company to pay the sum so due, and the Company has, for the space of three weeks succeeding the service of such demand, neglected to pay such sum, or to secure or compound for the same to the satisfaction of the creditor ;

(b) whenever any suit or other proceeding has been instituted against any member of the Company for any debt or demand due or claimed to be due from the Company, or from him in his character of member of the Company, and notice in writing of the institution of such suit or other legal proceeding having been served upon the Company by leaving the same at the principal place of business of the Company, or by delivering it to the secretary or some director, manager, or principal officer of the Company, or by otherwise serving the same in such manner as the Court may approve or direct, the Company has not, within ten days after service of such notice, paid,

18. If the executor renounce or fail to accept the executorship within the time limited for the acceptance or refusal thereof, the will may be proved, and letters of administration, may be granted to the person who would be entitled to administration in case of intestacy.

Grant of administration to universal or residuary legatee. 19. When the deceased has made a will, but has not appointed an executor, or

when he has appointed an executor, who is legally incapable or refuses to act, or has died before the testator, or before he has proved the will, or

when the executor dies after having proved the will, but before he has administered all the estate of the deceased, a universal or a residuary legatee may be admitted to prove the will, and letters of administration, with the will annexed, may be granted to him of the whole estate, or of so much thereof as may be unadministered.

20. When a residuary legatee, who has a beneficial interest, survives the testator, but dies before the estate has been fully administered, his representative has the same right to administration, with the will annexed, as such residuary legatee.

21. When there is no executor and no residuary legatee or representative of a residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate, or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the will, and letters of administration may be granted to him or them accordingly.

22. Letters of administration, with the will annexed, shall not be granted to any legatee, other than a universal or a residuary legatee, until a citation has been issued and published in the manner hereinafter mentioned, calling on the next-of-kin to accept or refuse letters of administration.

246. Where an order has been made for winding up an un-registered Company, in addition to the provisions hereinbefore contained in the case of Companies formed under this Act, it is hereby further provided that no suit shall be commenced or proceeded with against any contributory of the Company in respect of any debt of the Company, except with the leave of the Court, and subject to such terms as the Court may impose.

247 If any unregistered Company has no power to sue and be sued in a common name, or if, for any reason, it appears expedient, the Court may, by the order made for winding up such Company, or by any subsequent order, direct that all such property, moveable and immoveable, including all interests, claims, and rights in, to, and out of, property, moveable and immoveable, and including actionable claims, as may belong to, or be vested in, the Company, or to or in any person or persons on trust for or on behalf of the Company, or any part of such property is to vest in the official liquidator or official liquidators by his or their official name or names; and thereupon the same or such part thereof as may be specified in the order shall vest accordingly, and the official liquidator or official liquidators may, in his or their official name or names, or in such name or names, and after giving such indemnity as the Court directs, bring or defend any suits or other legal proceedings relating to any property vested in him or them, or any suits or other legal proceedings necessary to be brought or defended for the purposes of effectually winding up the Company, and recovering the property thereof.

248. The provisions made by this Part of this Act with respect to unregistered Companies shall be deemed to be made in addition to, and not in restriction of, any provisions hereinbefore contained with respect to winding up Companies by the Court.

The Court or official liquidator may, in addition to anything contained in this Part of this Act, exercise any powers, or do any act, in the case of unregistered Companies, which might be exercised or done by it or him in winding up Companies formed under this Act; but an unregistered Company shall not, except in the event of its being wound up, be deemed to be a Company under this Act, and then only to the extent provided by this Part of this Act.

may be granted, limited until the will or an authenticated copy of it be produced.

(b.)—Grants for the Use and Benefit of Others having Right.

28. When any executor is absent from the province in which Administration with will application is made, and there is no annexed to attorney of absent executor within the province willing to act, letters of administration, with the will annexed, may be granted to the agent of the absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself.

29. When any person, to whom, if present, letters of administration, with the will annexed, might be granted, is absent from the province, letters of administration, with the will annexed, may be granted to his agent, limited as above mentioned.

Administration with will annexed to attorney of absent person, who, if present, would be entitled to administer.

30 When a person entitled to administration in case of intestacy is absent from the province, and no person equally entitled is willing to act, letters of administration may be granted to the agent of the absent person, limited as before mentioned.

Administration to attorney of absent person entitled to administer in case of intestacy.

31. When a minor is sole executor or sole residuary legatee, letters of administration, with the will annexed, may be granted to the legal guardian of such minor, or to such other person as the Court shall think fit, until the minor has attained his majority, at which period, and not before, probate of the will shall be granted to him.

Administration during minority of sole executor or residuary legatee.

32. When there are two or more minor executors, and no executor who has attained majority, or two or more residuary legatees, and no residuary legatee who has attained majority, the grant shall be limited until one of them has attained his majority.

Administration during minority of several executors or residuary legatees.

33. If a sole executor or a sole universal or residuary legatee, or a person who would be solely entitled to the estate of the intestate according to Administration for use and benefit of lunatic.

253.* Subject to the provisions hereinbefore contained, the Court may, in any proceedings under this Act, make such order as to costs as it thinks fit.

254.* The High Court may, from time to time, make rules† consistent with this Act, and with the Code of Civil Procedure,‡ concerning the mode of proceedings to be had for winding up a Company in such Court, and in the Courts subordinate thereto, and for giving effect to the provisions hereinbefore contained as to the reduction of the capital, and the subdivision of the shares, of a Company

255. In sections 1 and 18 of Act No. XXI. of 1860 Construction of "Registrar of Joint-stock Companies" in Act XXI. of 1860. (*For the Registration of Literary, Scientific, and Charitable Societies*), the words, "Registrar of Joint-stock Companies," shall be construed to mean Registrar of Joint-stock Companies under this Act, or any Act for the time being in force.

256. Save as provided in sections 152 and 153, nothing in this Act shall be deemed to apply to the Bank of Bengal, the Bank of Madras, and the Bank of Bombay.

FIRST SCHEDULE.

TABLE A.

REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES.

Shares.

(1) If several persons are registered as joint holders of any share, any one of such persons may give effectual receipts for any dividend payable in respect of such share

* Cf. ss 45 and 20, respectively, of the Companies Act, 1867 (Stat 30 & 31 Vict, c 131)

† For rules made by the High Court, Calcutta, under this section, see *Calcutta Gazette*, 1903, Pt I, p. 997, and *Assam Gazette*, 1903, Pt IIA, p 534

‡ This reference should now be meant as applying to Act V of 1908.—See s 158 of the Act.

to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other suit which may be commenced in the same or in any other Court between the parties, or any other parties, touching the matters at issue in the said suit, and until a final decree shall be made therein and carried into complete execution.

39. If, at the expiration of twelve months from the date of any probate or letters of administration, the executor or administrator, to whom the same has or have been granted, is absent from the province within which the Court that has granted the probate or letters of administration is situate, such Court may grant, to any person whom it thinks fit, letters of administration limited to the purpose of becoming and being made a party to a suit to be brought against the executor or administrator, and carrying the decree which may be made therein into effect.

40. In any case in which it appears necessary for preserving the property of a deceased person, the Court, within whose district any of the property is situate, may grant, to any person whom such Court thinks fit, letters of administration limited to the collection and preservation of the property of the deceased, and giving discharges for debts due to his estate, subject to the directions of the Court.

41. When a person has died intestate, or leaving a will of which there is no executor willing and competent to act, or where the executor is, at the time of the death of such person resident out of the province, and it appears to the Court to be necessary or convenient to appoint some person to administer the estate or any part thereof other than the person who, under ordinary circumstances, would be entitled to a grant of administration, the Judge may, in his discretion, having regard to consanguinity amount of interest, the safety of the estate, and probability that it will be properly administered, appoint such person as he thinks fit to be administrator;

and, in every such case, letters of administration may be limited or not, as the Judge thinks fit.

(11.) The transfer books shall be closed during the fourteen days immediately preceding the ordinary general meeting in each year.

Transmission of Shares

(12) The executors or administrators of a deceased member shall be the only persons recognized by the Company as having any title to his share

(13) Any person becoming entitled to a share, in consequence of the death, bankruptcy, or insolvency of any member, or in consequence of the marriage of any female member, may be registered as a member, upon such evidence being produced as may, from time to time, be required by the Company.

(14) Any person who has become entitled to a share in consequence of the death, bankruptcy, or insolvency of any member, or in consequence of the marriage of any female member, may, instead of being registered himself, elect to have some person to be named by him registered as a transferee of such share

(15) The person so becoming entitled shall testify such election by executing to his nominee an instrument of transfer of such share.

(16) The instrument of transfer shall be presented to the Company, together with such evidence as the directors may require to prove the title of the transferee, and thereupon the Company shall register the transferee as a member.

Forfeiture of Shares.

(17) If any member fails to pay any call on the day appointed for payment thereof, the directors may, at any time thereafter, during such time as the call remains unpaid, serve a notice on him requiring him to pay such call together with interest and any expenses that may have accrued by reason of such non-payment.

(18) The notice shall name a further day on or before which such call and all interest and expenses that have accrued by reason of such non-payment are to be paid. It shall also name the place where payment is to be made, the place so named being either the registered office of the Company, or some other place at which calls of the Company are usually made payable. The notice shall also state that, in the event of non-payment at or before the time and at the place appointed, the shares in respect of which such call was made will be liable to be forfeited.

(19) If the requisitions of any such notice as aforesaid are not complied with, any share in respect of which such notice has been given may, at any time thereafter, before payment of all calls, interest, and expenses due in respect thereof has been made, be forfeited by a resolution of the directors to that effect.

(20) Any share so forfeited shall be deemed to be the property of the Company, and may be disposed of in such manner as the Company in general meeting thinks fit.

CHAPTER IV.

ALTERATION AND REVOCATION OF GRANTS.*

48. Errors in names and descriptions, or in setting forth the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the Court, and the grant of probate or letters of administration may be altered and amended accordingly.

49. If, after the grant of letters of administration with the will annexed, a codicil be discovered, it may be added to the grant on due proof and identification, and the grant altered and amended accordingly.

Revocation or annulment for just cause.

50. The grant of probate or letters of administration may be revoked or annulled for just cause.

"Just cause."

Explanation.—"Just cause" is—

1st, that the proceedings to obtain the grant were defective in substance;

2nd, that the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case;

3rd, that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently;

4th, that the grant has become useless and inoperative through circumstances;

† *5th*, that the person to whom the grant was made has, wilfully and without reasonable cause, omitted to exhibit an inventory or account in accordance with the provisions of Chapter VII. of this Act, or has exhibited under that chapter an inventory or account which is untrue in a material respect.

Illustrations.

(a.) The Court by which the grant was made had no jurisdiction.

* Compare Act X. of 1865, Pt. XXX. (g) and (h).

† Cl. 5th has been added by the Probate and Administration Act (VI. of 1889), s. 11.

which the member is entitled, and limiting a time within which the offer, if not accepted, will be deemed to be declined ; and after the expiration of such time, or on the receipt of an intimation from the member to whom such notice is given that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the Company

(28.) Any capital raised by the creation of new shares shall be considered as part of the original capital, and shall be subject to the same provisions, with reference to the payment of calls and the forfeiture of shares on non payment of calls or otherwise, as if it had been part of the original capital.

General Meetings

(29) The first general meeting shall be held at such time, not being more than six months after the registration of the Company, and at such place, as the directors may determine

(30) Subsequent general meetings shall be held, once at the least in every year, at such time and place as may be prescribed by the Company in general meeting, and, if no other time or place is prescribed, a general meeting shall be held, on the first Monday in February in every year, at such place as may be determined by the directors.

(31) The above-mentioned general meetings shall be called ordinary meetings, all other general meetings shall be called extraordinary

(32) The directors may, whenever they think fit, and they shall upon a requisition made in writing by not less than one-fifth in number of the members of the Company, convene an extraordinary general meeting.

(33.) Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the Company.

(34) Upon the receipt of such requisition, the directors shall forthwith proceed to convene an extraordinary general meeting. If they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists, or any other members amounting to the required number, may themselves convene an extraordinary general meeting.

Proceedings at General Meeting

(35). Seven days' notice at the least, specifying the place, the day, and the hour of meeting, and, in case of special business, the general nature of such business, shall be given to the members in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the Company in general meeting, but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting

(36) All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend and the consideration of the accounts, balance-sheets, and the ordinary report of the directors

54. The District Judge may order any person to produce and bring into Court any paper or writing being or purporting to be testamentary which may be shown to be in the possession or under the control of such person ; and, if it be not shown that any such paper or writing is in the possession or under the control of such person, but there is reason to believe that he has the knowledge of any such paper or writing, the Court may direct him to attend for the purpose of being examined respecting the same ; and he shall be bound to answer such questions as may be put to him by the Court, and if so ordered, to produce and bring in such paper or writing, and shall be subject to the like punishment under the Indian Penal Code,* in case of default in not attending, or in not answering such questions or not bringing in such paper or writing, as he would have been subject to in case he had been a party to a suit, and had made such default ; and the costs of the proceeding shall be in the discretion of the Judge.

55. The proceedings of the Court of the District Judge, in relation to the granting of probate and letters of administration, shall, except as hereinafter otherwise provided, be regulated, so far as the circumstances of the case will admit, by the Code of Civil Procedure †

56. Probate of the will or letters of administration to the estate of a deceased person may be granted by the District Judge under the seal of his Court, if it appears by a petition, verified as hereinafter mentioned, of the person applying for the same, that the testator or intestate, as the case may be, had, at the time of his decease, a fixed place of abode, or any property, moveable or immoveable, within the jurisdiction of the Judge.

57. When the application is made to the Judge of a district in which the deceased had no fixed abode at the time of his death, the Judge may in his discretion, refuse the application, if, in his judgment, it could be

* See Act XLV. of 1860.

† See now Act XIV. of 1882, s. 3.

(47) No member shall be entitled to vote at any general meeting unless all calls due from him have been paid, and no member shall be entitled to vote in respect of any share that he has acquired by transfer, at any meeting held after the expiration of three months from the registration of the Company, unless he has been possessed of the share in respect of which he claims to vote for at least three months previously to the time of holding the meeting at which he proposes to vote

(48) Votes may be given either personally or by proxy

(49) The instrument appointing a proxy shall be in writing, under the hand of the appointor, or if such appointor is a corporation, under their common seal, and shall be attested by one or more witness or witnesses. No person shall be appointed a proxy who is not a member of the Company

(50) The instrument appointing a proxy shall be deposited at the registered office of the Company not less than seventy-two hours before the time for holding the meeting at which the person named in such instrument proposes to vote, but no instrument appointing a proxy shall be valid after the expiration of twelve months from the date of its execution

(51) Any instrument appointing a proxy shall be in the following form —

Company, Limited.

I, _____, of _____, being a member of the _____ Company, Limited, and entitled to _____ vote or _____ votes, hereby appoint _____, of _____, as my proxy, to vote for me and on my behalf at the [ordinary or extraordinary, as the case may be] general meeting of the Company to be held on the _____ day of _____, and at any adjournment thereof [or at any meeting of the Company that may be held in the year _____]. As witness my hand, this _____ day of _____

Signed by the said _____ in the presence of _____

Directors

(52) The number of the directors, and the names of the first directors shall be determined by the subscribers of the memorandum of association

(53) Until directors are appointed, the subscribers of the memorandum of association shall be deemed to be directors.

(54) The future remuneration of the directors, and their remuneration for services performed previously to the first general meeting, shall be determined by the Company in general meeting

Powers of Directors

(55) The business of the Company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the Company, and may exercise all such powers of the Company as are not, by the foregoing Act, or by these articles, required to be exercised by the Company in general meeting, subject nevertheless to any regulations of these

proviso to section 59, the High Court or District Judge shall send a certificate thereof to the following Courts, namely:—

- (a) when the grant has been made by a High Court, to each of the other High Courts,
- (b) when the grant has been made by a District Judge, to the High Court to which such District Judge is subordinate and to each of the other High Courts.

(2) Every certificate referred to in sub-section (1) shall be to the following effect, namely:—

‘I, A B, Registrar [or as the case may be] of the High Court, of Judicature at [or as the case may be], hereby certify that on the day of , the High Court of Judicature at [or as the case may be] granted probate of the will [or letters] has [or have] effect over all the property of the deceased throughout the whole of British India;’

and such certificate shall be filed by the High Court receiving the same.

(3) Where any portion of the assets has been stated by the petitioner, as hereinafter provided in sections 62 and 64, to be situate within the jurisdiction of a District Judge in another Province, the Court required to send the certificate referred to in sub-section (1) shall send a copy thereof to such District Judge, and such copy shall be filed by the District Judge receiving the same.”

61. The application for probate or letters of administration, if made and verified in the manner hereinafter mentioned, shall be conclusive for the purpose of authorizing the grant of probate or administration; and no such grant shall be impeached by reason that the testator or intestate had no fixed place of abode, or no property within the district at the time of his death unless by a proceeding to revoke the grant if obtained by a fraud upon the Court.

62. Application for probate or for letters of administration, with the will annexed, shall be made by a petition distinctly written in English, or in the language in ordinary use in proceedings before the Court, in which the application is made, with the will, or in the cases mentioned in sections 24, 25, and 26, a copy, draft, or statement of the contents thereof annexed, and stating—

Petition for probate.

(63) The Company may, from time to time, in general meeting, increase or reduce the number of directors, and may also determine in what rotation such increased or reduced number is to go out of office

(64) Any casual vacancy occurring in the board of directors may be filled up by the directors, but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred

(65) The Company in general meeting may, by a special resolution, remove any director before the expiration of his period of office, and may, by an ordinary resolution, appoint another person in his stead. The person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed

Proceedings of Directors.

(66.) The directors may meet together for the despatch of business, adjourn and otherwise regulate their meeting as they think fit, and determine the quorum necessary for the transaction of business. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the chairman shall have a second or casting vote. A director may at any time summon a meeting of the directors

(67) The directors may elect a chairman of their meetings, and determine the period for which he is to hold office, but, if no such chairman is elected, or if, at any meeting, the chairman is not present at the time appointed for holding the same, the directors present shall choose some one of their number to be chairman of such meeting.

(68) The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit. Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the directors

(69) A committee may elect a chairman of its meetings. If no such chairman is elected, or if he is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting.

(70.) A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present; and, in case of an equality of votes, the chairman shall have a second or casting vote

(71.) All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director

Dividends.

(72.) The directors may, with the sanction of the Company in general meeting, declare a dividend to be paid to the members in proportion to their shares.

64. Application for letters of administration shall be made by petition distinctly written as aforesaid, and stating—

Petition for letters of administration.

the time and place of the deceased's death,
the family or other relatives of the deceased, and their respective residences,

the right in which the petitioner claims,

the amount of assets which are likely to come to the petitioner's hands.

In addition to these particulars, the petition shall further state,—

when the application is to a District Judge, that the deceased, at the time of his death, had a fixed place of abode, or had some property, situate within the jurisdiction of the Judge; and,

when the application is to a District Delegate, that the deceased, at the time of his death, had a fixed place of abode within the jurisdiction of such delegate.

“When the application is to the District Judge and any portion of the assets likely to come to the petitioner's hands is situate in another Province, the petition shall further state the amount of such assets in each Province and the District Judges within whose jurisdiction such assets are situate.”*

65. Every person applying to any of the Courts mentioned

Additional statements in in the proviso to section 59 for probate petition for probate, &c. of a will or letters of administration of an estate, intended to have effect throughout British India shall state in his petition, in addition to the matters respectively required by sections 62 and 64, that, to the best of his belief, no application has been made to any other Court for a probate of the same will or for letters of administration of the same state, intended to have such effect as last aforesaid,

or, where any such application has been made, the Court to which it was made, the person or persons by whom it was made, and the proceedings (if any) had thereon.

And the Court to which any application is made under the proviso to section 59 may, if it think fit, reject the same.

* This para. has been added by Act VIII. of 1903.

summary of the property and liabilities of the Company arranged under the heads appearing in the form annexed to this table, or as near thereto as circumstances admit.

(82) A printed copy of such balance-sheet shall, seven days previously to such meeting, be served on every member in the manner in which notices are hereinafter directed to be served.

Audit.

(83) Once at the least in every year, the accounts of the Company shall be examined, and the correctness of the balance-sheet ascertained by one or more auditor or auditors

(84) The first auditors shall be appointed by the directors, subsequent auditors shall be appointed by the Company in general meeting

(85) If one auditor only is appointed, all the provisions herein contained relating to auditors shall apply to him

(86) The auditors may be members of the Company but no person is eligible as an auditor who is interested otherwise than as a member in any transaction of the Company, and no director or other officer of the Company is eligible during his continuance in office

(87) The election of auditors shall be made by the Company at their ordinary meeting in each year.

(88) The remuneration of the first auditors shall be fixed by the directors, that of subsequent auditors shall be fixed by the Company in general meeting

(89) Any auditor shall be re-eligible on his quitting office.

(90) If any casual vacancy occurs in the office of any auditor appointed by the Company, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the same.

(91.) If no election of auditors is made in manner aforesaid, the Local Government may, on the application of not less than five members of the Company, appoint an auditor for the current year, and fix the remuneration to be paid to him by the Company for his services

(92) Every auditor shall be supplied with a copy of the balance sheet, and it shall be his duty to examine the same with the accounts and vouchers relating thereto

(93) Every auditor shall have a list delivered to him of all books kept by the Company, and shall, at all reasonable times, have access to the books and accounts of the Company. He may, at the expense of the Company, employ accountants or other persons to assist him in investigating such accounts, and he may, in relation to such accounts, examine the directors or any other officer of the Company.

(94) The auditors shall make a report to the members upon the balance-sheet and accounts, and, in every such report, they shall state whether, in their opinion, the balance sheet is a full and fair balance-sheet, containing the particulars required by these regulations, and properly

The citation shall be fixed up in some conspicuous part of the court-house, and also in the office of the Collector of the district, and otherwise published or made known in such manner as the Judge or Delegate issuing the same may direct.

“Where any portion of the assets has been stated by the petitioner to be situate within the jurisdiction of a District Judge in another Province, the District Judge issuing the same shall cause a copy of the citation to be sent to such other District Judge, who shall publish the same in the same manner as if it were a citation issued by himself, and shall certify such publication to the District Judge who issued the citation.”*

70. Caveats against the grant of probate or letters of administration may be lodged with the District Judge or a District Delegate; and, immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge; and, immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate. if any, within whose jurisdiction it is alleged the deceased had his fixed place of abode at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same.

Form of caveat.

71. The caveat shall be to the following effect:—

“Let nothing be done in the matter of the estate of *A B*, late of _____, deceased, who died on the _____ day of _____, at _____, without notice to *C D*, of _____.”

72. No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the Judge or District Delegate to whom the application has been made, or notice thereof has been given of its entry with some other Delegate, until after such notice to the person by whom the same has been entered, as the Court shall think reasonable.

73. A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

* This para. has been added by Act VIII. of 1903.

Dr.

Balance sheet of the*

CAPITAL AND LIABILITIES.				
I. CAPITAL		SHOWING—	Rs.	As.
	1	The number of shares ...	..
	2	The amount paid per share ...	...
	3	If any arrears of calls, the nature of the arrears and the names of the defaulters .	...	...
	4	The particulars of any forfeited shares ...	...	...
II. DEBTS AND LIABILITIES OF THE COMPANY		SHOWING—		
	5	The amount of loans on mortgages or debenture-bonds ...	...
	6	The amounts of debts owing by the Company distinguishing—		
		(a) Debts for which acceptances have been given ...		
		(b) Debts to tradesmen for supplies of stock-in-trade or other articles ...	...
		(c) Debts for law-expenses ...	..
		(d) Debts for interest on debentures or other loans ...	...
		(e) Unclaimed dividends ...	...
		(f) Debts not enumerated above ...	...
VI. RESERVE FUND		SHOWING		
		The amount set aside from profits to meet contingencies ...	...
VII. PROFIT AND LOSS		SHOWING		
		The disposable balance for payment of dividends, &c.		
CONTINGENT LIABILITIES.		Claims against the Company not acknowledged as debts ...	..
		Moneys for which the Company is contingently liable ...	...

* See clauses (81) and (82)

a copy whereof is hereunto annexed, was proved and registered before me, and that administration of the property and credits of the said deceased, and in any way concerning his will was granted to _____, the executor in the said will named, *he having undertaken to administer the same, and to make a full and true inventory of the said property and credits, and exhibit the same in this Court within six months from the date of this grant, or within such further time as the Court may, from time to time, appoint; and also to render to this Court a true account of the said property and credits within one year from the same date, or within such further time as the Court may, from time to time, appoint.**

"The _____ day of _____ 18____."

77. Whenever it appears to the District Judge or District Delegate that letters of administration to be under seal of the estate of a person deceased, with or without a copy of the will annexed, should be granted, he shall grant the same under the seal of his Court in manner following :—

"I, _____, Judge of the district of _____ [or Delegate appointed for granting probate or letters of administration in (here insert the limits of the Delegate's jurisdiction)], hereby make known that, on the _____ day of _____, letters of administration (with or without the will annexed, *as the case may be*) of the property and credits of _____, late of _____ deceased, were granted to _____, the father (or *as the case may be*) of the deceased, *he having undertaken to administer the same, and to make a full and true inventory of the said property and credits, and exhibit the same in this Court within six months from the date of this grant, or within such further time as the Court may from time to time, appoint; and also to render to this Court a true*

* The italicized words ending s. 76 have been substituted for the words, "he having undertaken to administer the same and to make a true inventory of the said property and credits, and to exhibit the same at or before the expiration of six months from the date of this grant, and also to render a true account of the said property and credits within one year from the same date," by the Probate and Administration Act (VI. of 1889), s. 12.

TABLE B

TABLE OF FEES TO BE PAID TO THE REGISTRAR OF JOINT-STOCK COMPANIES BY A COMPANY HAVING A CAPITAL DIVIDED INTO SHARES.

	Rs.	A.	P.
For registration of a Company whose nominal capital does not exceed Rs 20,000, a fee of	40	0	0
For registration of a Company whose nominal capital exceeds Rs 20,000, the above fee of forty rupees, with the following additional fees regulated according to the amount of nominal capital (that is to say) —			
For every 10,000 rupees of nominal capital, or part of 10,000 rupees, after the first 20,000 rupees up to 50,000 rupees	20	0	0
For every 10,000 rupees of nominal capital, or part of 10,000 rupees, after the first 50,000 rupees up to 1,00,000 rupees	5	0	0
For every 10,000 rupees of nominal capital or part of 10,000 rupees after the first 1,00,000 rupees	1	0	0
For registration of any increase of capital made after the first registration of the Company, the same fees per 10,000 rupees or part of 10,000 rupees as would have been payable if such increased capital had formed part of the original capital at the time of registration.			
Provided that no Company shall be liable to pay, in respect of nominal capital, on registration or afterwards, any greater amount of fees than 1,000 rupees, taking into account, in the case of fees payable on an increase of capital after registration, the fees paid on registration.			
For registration of any existing Company, except such Companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new Company.			
For registering any document hereby required or authorized, to be registered, other than the memorandum of association	5	0	0
For making a record of any fact hereby authorized or required to be recorded by the Registrar of Companies, a fee of	5	0	0

TABLE C.

TABLE OF FEES TO BE PAID TO THE REGISTRAR OF JOINT-STOCK COMPANIES BY A COMPANY NOT HAVING A CAPITAL DIVIDED INTO SHARES.

	Rs.	A.	P.
For registration of a Company whose number of members, as stated in the articles of association, does not exceed 20	40	0	0

shall make regulations for the preservation and inspection of the wills so filed as aforesaid.*

82. After any grant of probate or letters of administration, no other than the person to whom the same Grantee of probate or administration alone to sue, &c., shall have been granted shall have power until same revoked. to sue or prosecute any suit, or otherwise act as representative of the deceased, throughout the province in which the same may have been granted, until such probate or letters of administration shall have been recalled or revoked.

83. In any case before the District Judge in which there is Procedure in contentious cases. contention, the proceedings† shall take, as nearly as may be, the form of a suit, according to the provisions of the Code of Civil Procedure,‡ in which the petitioner for a probate or letters of administration, as the case may be, shall be the plaintiff, and the person who may have appeared as aforesaid to oppose the grant shall be the defendant.

84. Where any probate is, or letters of administration are, Payment to executor or administrator before probate or administration revoked. revoked, all payments *bond fide* made to any executor or administrator under such probate or administration before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same;

and the executor or administrator, who shall have acted under Right of such executor or administrator to recoup himself. any such revoked probate or administration, may retain and reimburse himself out of the assets of the deceased in respect of any payments made by him which the person to whom probate or letters of administration shall be afterwards granted might have lawfully made.

85. Notwithstanding anything hereinbefore contained, it shall, Power to refuse letters of administration. except in cases to which the Hindu Wills Act, 1870, applies,§ be in the discretion

* For rules made by the Chief Commissioner (now Lieutenant-Governor) of Burma, see Burma Rules Manual, Ed. 1897, p. 18.

† The word "proceedings" has been substituted for the word "proceeding" by the Repealing and Amending Act (XII. of 1891).

‡ See now Act XIV. of 1882.

§ The Hindu Wills Act (XXI. of 1870) applies to the Wills of Hindus, Jainas, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the Towns of Madras and Bombay.

- The assets of the Company on that day were—
 Government securities [*sisting them*], Rs.
 Bills of exchange, hundis, and promissory notes, Rs.
 Cash at the bankers, Rs.
 Other securities, Rs.

SECOND SCHEDULE.

(See section 95).

FORM A.

MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY SHARES

1st.—The name of the Company is "The _____ Company,
 Limited"

2nd.—The registered office of the Company will be situate in _____

3rd.—The objects for which the Company is established are
 "_____ and the doing all such other things as are in-
 cidental or conducive to the attainment of the above objects."

4th.—The liability of the members is limited.

5th.—The capital of the Company is Rs _____ divided
 into _____ shares of Rs _____ each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a Company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the Company set opposite our respective names —

Names, addresses, and descriptions of subscribers	Number of shares taken by each subscriber.
1. <i>A B.</i> of _____ 2. <i>C D</i> " 3. <i>E F</i> " 4. <i>G H</i> " 5. <i>I J</i> " 6. <i>K L</i> " 7. <i>M N</i> "	
Total shares taken	...

Dated the _____ day of _____
 Witness to the above signatures.

O. P. of _____

90.* (1) An executor or administrator has, subject to the provisions of this section, power to dispose, as he thinks fit, of all or any of the property for the time being vested in him under section 4.

Power of executor or administrator to dispose of property.

(2) The power of an executor to dispose of immoveable property so vested in him is subject to any restriction which may be imposed in this behalf by the will appointing him, unless probate has been granted to him, and the Court which granted the probate permits him by an order in writing, notwithstanding the restriction, to dispose of any immoveable property specified in the order in a manner permitted by the order.

(3) An administrator may not, without the previous permission of the Court by which the letters of administration were granted,—

(a) mortgage, charge, or transfer by sale, gift, exchange, or otherwise any immoveable property for the time being vested in him under section 4, or

(b) lease any such property for a term exceeding five years.

(4) A disposal of property by an executor or administrator in contravention of sub-section (2) or sub-section (3), as the case may be, is voidable at the instance of any other person interested in the property.

(5) Before any probate or letters of administration is or are granted under this Act, there shall be endorsed thereon, or annexed thereto, a copy of sub-sections (1), (2), and (4), or of sub-sections, (1), (3), and (4), as the case may be.

(6) A probate or letters of administration shall not be rendered invalid by reason of the endorsement or annexure required by the last-foregoing sub-section not having been made thereon or attached thereto, nor shall the absence of such an endorsement or annexure authorize an executor or administrator to act otherwise than in accordance with the provisions of this section.

91. If an executor or administrator purchases, either directly or indirectly, any part of the property of the deceased, the sale is voidable at the instance of any other person interested in the property sold.

Purchase by executor or administrator of deceased's property.

* This section was substituted for the original s. 90 by the Probate and Administration Act (VI. of 1889), s. 14. For validation of acts under grants of administration made before the commencement of Act VI. of 1889, see s. 19 of that Act.

Definition of Members.

(3.) Every person shall be deemed to have agreed to become a member of the Company who insures any ship or share in a ship in pursuance of the regulations hereinafter contained.

General Meetings.

(4.) The first general meeting shall be held at such time, not being more than three months after the incorporation of the Company, and at such place, as the directors may determine.

(5.) Subsequent general meetings shall be held at such time and place as may be prescribed by the Company in general meeting, and, if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in every year, at such place as may be determined by the directors.

(6.) The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

(7.) The directors may, whenever they think fit, and they shall upon a requisition made in writing by any five or more members, convene an extraordinary general meeting.

(8.) Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the Company.

(9.) Upon the receipt of such requisition, the directors shall forthwith proceed to convene a general meeting. If they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists or any other five members may themselves convene a meeting.

Proceedings at General Meetings.

(10.) Seven days' notice at the least, specifying the place, the day, and the hour, of meeting, and, in case of special business, the general nature of such business shall be given to the members in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the Company in general meeting, but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.

(11.) All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts, balance sheets, and the ordinary report of the directors.

(12.) No business shall be transacted at any meeting, except the declaration of a dividend, unless a quorum of members is present at the commencement of such business. Such quorum shall be ascertained as follows, that is say: if the members of the Company, at the time of the meeting, do not exceed ten in number, the quorum shall be five; if they exceed ten, there shall be added to the above quorum one for every five

CHAPTER VII.

OF THE DUTIES OF AN EXECUTOR OR ADMINISTRATOR.*

97. It is the duty of an executor to provide funds for the performance of the necessary funeral ceremonies of the deceased in a manner suitable to his condition if he has left property sufficient for the purpose.

98.† (1) An executor or administrator shall, within six months from the grant of probate or letters of administration, or within such further time as the Court which granted the probate or letters may, from time to time, appoint, exhibit in that Court an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person to which the executor or administrator is entitled in that character, and shall, in like manner, within one year from the grant, or within such further time as the said Court may, from time to time, appoint, exhibit an account of the estate, showing the assets which have come to his hands, and the manner in which they have been applied or disposed of.

(2) The High Court may, from time to time, prescribe the form in which an inventory or account under this section is to be exhibited.

(3) If an executor or administrator, on being required by the Court to exhibit an inventory or account under this section, intentionally omits to comply with the requisition, he shall be deemed to have committed an offence under section 176 of the Indian Penal Code.

(4) The exhibition of an intentionally false inventory or account under this section shall be deemed to be an offence under section 193 of that Code.

* Compare Act X. of 1865, Pt. XXXIV., as amended by Act XIII. of 1875.

† This section has been substituted for the original s. 98 by the Probate and Administration Act (VI. of 1889), s. 15.

Company Limited.

I, of , being a member of the Company, Limited, hereby appoint , of , as my proxy, to vote for me, and on my behalf, at the [ordinary or extraordinary, as the case may be] general meeting of the Company to be held on the day of , and at any adjournment thereof [or at any meeting of the Company that may be held in the year]

As witness my hand, this day of .

Signed by the said in the presence of .

Directors.

(25) The number of the directors and the names of the first directors shall be determined by the subscribers of the memorandum of association.

(26.) Until directors are appointed, the subscribers of the memorandum of association shall be deemed to be directors.

Powers of Directors.

(27) The business of the Company shall be managed by the directors who may exercise all such powers of the Company as are not hereby required to be exercised by the Company in general meeting, but no regulation made by the Company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made

Election of Directors.

(28) The directors shall be elected annually by the Company in general meeting.

Business of Company.

[Here insert rules as to mode in which business of insurance is to be conducted]

Accounts.

(29.) The accounts of the Company shall be audited by a committee of five members, to be called the audit-committee

(30) The first audit-committee shall be nominated by the directors out of the body of members.

(31) Subsequent audit-committees shall be nominated by the members at the ordinary general meeting in each year.

(32) The audit-committee shall be supplied with a copy of the balance-sheet, and it shall be their duty to examine the same with the accounts and vouchers relating thereto

(33) The audit-committee shall have a list delivered to them of all books kept by the Company, and they shall at all reasonable times have access to the books and accounts of the Company.

But the executor or administrator shall pay all such debts as he knows of, including his own, equally and rateably, as far as the assets of the deceased will extend.

Debts to be paid before legacies.

105. Debts of every description must be paid before any legacy.

106. If the estate of the deceased is subject to any contingent liabilities, an executor or administrator is not bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due.

107. If the assets, after payment of debts, necessary expenses, and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions ;

and, in the absence of any direction to the contrary in the will, the executor has no right to pay one legatee in preference to another, nor to retain any money on account of a legacy to himself, or to any person for whom he is a trustee.

108. Where there is a specific legacy, and the assets are sufficient for the payments of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement.

109. Where there is a demonstrative legacy, and the assets are sufficient for the payment of debts and necessary expenses, the legatee has a preferential claim for payment of his legacy out of the fund from which the legacy is directed to be paid until such fund is exhausted, and if, after the fund is exhausted, part of the legacy still remains unpaid, he is entitled to rank for the remainder against the general assets as for a legacy of the amount of such unpaid remainder.

110. If the assets are not sufficient to answer the debts and specific legacies, an abatement shall be made from the latter rateably in proportion to their respective amounts.

FORM C.

MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED
BY GUARANTEE, AND HAVING A CAPITAL DIVIDED INTO SHARES.*Memorandum of Association.*

1st.—The name of the Company is "The Hotel Company Limited."

2nd.—The registered office of the Company will be situate in .

3rd.—The objects for which the Company is established are "the facilitating travelling in by providing hotels and conveyances by sea and by land for the accommodation of travellers, and the doing all such other things as are incidental or conducive to the attainment of the above objects"

4th.—Every member of the Company undertakes to contribute to the assets of the Company, in the event of the same being wound up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the Company contracted before the time at which he ceases to be a member, and the costs, charges, and expenses of winding up the same, and, for the adjustment of the rights of the contributors amongst themselves, such amount as may be required, not exceeding Rs. 200.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a Company in pursuance of this memorandum of association.

Names, Addresses, and Descriptions of Subscribers.

1. A. B. of
- 2 C D. "
- 3 E. F. "
- 4 G. H. "
- 5 I J. "
- 6 K. L. "
7. M. N. "

Dated the day of 18 .

Witness to the above signatures

O. P. of .

Articles of Association to accompany preceding Memorandum of Association.

1. The capital of the Company shall consist of five lakhs of rupees divided into five thousand shares of one hundred rupees each.

2. The directors may, with the sanction of the Company in general meeting, reduce the amount of shares.

Illustrations.

(a) A horse is bequeathed. The executor requests the legatee to dispose of it or a third party proposes to purchase the horse from the executor, and he directs him to apply to the legatee. Assent to the legacy is implied.

(b) The interest of a fund is directed by the will to be applied for the maintenance of the legatee during his minority. The executor commences so to apply it. This is an assent to the whole of the bequest.

(c) A bequest is made of a fund to A, and after him to B. The executor pays the interest of the fund to A. This is an implied assent to the bequest to B.

(d) Executors die after paying all the debts of the testator, but before satisfaction of specific legacies. Assent to the legacies may be presumed.

(e) A person to whom a specific article has been bequeathed takes possession of it, and retains it without any objection on the part of the executor. His assent may be presumed.

114. The assent of an executor to a legacy may be conditional, and if the condition be one which he has a right to enforce, and it is not performed, there is no assent.

Illustrations.

(a) A bequeaths to B his lands of Sultanpur, which, at the date of the will, and at the death of A, were subject to a mortgage for 10,000 rupees. The executor assents to the bequest on condition that B shall, within a limited time, pay the amount due on the mortgage at the testator's death. The amount is not paid. There is no assent.

(b) The executor assents to a bequest on condition that the legatee shall pay him a sum of money. The payment is not made. The assent is nevertheless valid.

115. When the executor is a legatee, his assent to his own legacy is necessary to complete his title to it in the same way as it is required when the bequest is to another person, and his assent may in like manner be express or implied.

Assent shall be implied if, in his manner of administering the property, he does any act which is referable to his character of legatee, and is not referable to his character of executor.

Implied assent.

Illustration

An executor takes the rent of a house or the interest of Government securities bequeathed to him, and applies it to his own use. This is assent.

Names, Addresses, and Descriptions of Subscribers.

1. A. B. of
2. C. D. "
3. E. F. "
4. G. H. "
5. I. J. "
6. K. L. "
7. M. N. "

Dated the day of 18 .

Witness to the above signatures :

Q. R. of

Articles of Association to accompany the preceding Memorandum of Association.

Capital of the Company.

The capital of the Company is twenty thousand rupees divided into twenty shares of one thousand rupees each.

Application of Table A.

All the articles of Table A shall be deemed to be incorporated with these articles, and to apply to the Company

We, the several persons whose names and addresses are subscribed, agree to take the number of shares in the capital of the Company set opposite our respective names.

Names, addresses, and descriptions of subscribers.	Number of shares taken by subscribers.
1. A. B. of	
2. C. D. "	
3. E. F. "	
4. G. H. "	
5. I. J. "	
6. K. L. "	
7. M. N. "	
Total shares taken	...

Dated the dated of 18 .

Witness to the above signatures :

Q. R. of

120. Where there is a direction that the first payment of an annuity shall be made within one month or any other division of time from the death of the testator, or on a day certain,

Date of successive payments when first payment directed to be made within given time or on day certain.

the successive payments are to be made on the anniversary of the earliest day on which the will authorizes the first payment to be made ;

and, if the annuitant dies in the interval between the times of

Apportionment where annuitant dies between times of payment.

payment, an apportioned share of the annuity shall be paid to his representative.

CHAPTER X.

OF THE INVESTMENT OF FUNDS TO PROVIDE FOR LEGACIES.*

121. Where a legacy, not being a specific legacy, is given for

Investment of sum bequeathed where legacy, not specific, given for life.

life, the sum bequeathed shall, at the end of the year, be invested in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct, and the proceeds thereof shall be paid to the legatee as the same shall accrue due.

122. Where a general legacy is given to be paid at a future

Investment of general legacy to be paid at future time.

time, the executor shall invest a sum sufficient to meet it in securities of the kind mentioned in the last-preceding section.

Intermediate interest.

The intermediate interest shall form part of the residue of the testator's estate.

123. Where an annuity is given, and no fund is charged with

Procedure when no fund charged with, or appropriated to, annuity.

its payment, or appropriated by the will to answer it, a Government annuity of the specified amount shall be purchased ; or

* Compare Act X. of 1865, Pt. XXXVII., as amended by Act VI. of 1881. The provisions in Ch. X. as to an executor apply also to an administrator with the will annexed.—See s. 148, *infra*.

Folio in register- ledger containing particulars.	NAMES, ADDRESSES, AND OCCUPATIONS.			
	Surname.	Christian name.	Address.	Occupation.

and such payment into the Court of the District Judge or into the Court of Wards, as the case may be, shall be a sufficient discharge for the money so paid;

and such money, when paid in, shall be invested in the purchase of Government securities, which, with the interest thereon, shall be transferred or paid to the person entitled thereto, or otherwise applied for his benefit, as the Judge or the Court of Wards, as the case may be, may direct.

CHAPTER XI.

OF THE PRODUCE AND INTEREST OF LEGACIES.*

128. The legatee of a specific legacy is entitled to the clear
Legatee's title to produce of specific legacy. produce thereof, if any, from the testator's death.

Exception.—A specific bequest, contingent in its terms, does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy.

The clear produce of it forms part of the residue of the testator's estate

Illustrations.

(a.) A bequeaths his flock of sheep to B. Between the death of A and delivery by his executor, the sheep are shorn, or some of the ewes produce lambs. The wool and lambs are the property of B.

(b.) A bequeaths his Government securities to B, but postpones the delivery of them till the death of C. The interest which falls due between the death of A and the death of C belongs to B, and must, unless he is a minor, be paid to him as it is received.

(c.) The testator bequeaths all his four per cent. Government promissory notes to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the notes, but the interest which accrues in respect of them, between the testator's death and A's completing 18, forms part of the residue.

129. The legatee under a general residuary bequest is
Residuary legatee's title to produce of residuary fund. entitled to the produce of the residuary fund from the testator's death.

Exception.—A general residuary bequest contingent in its terms does not comprise the income which may accrue upon the

* Compare Act X. of 1865, Pt. XXXVIII.

APPENDIX L

(Table B in Schedule to Act XIX. of 1857.)*

REGULATIONS FOR MANAGEMENT OF THE COMPANY.

Shares.

1. No person shall be deemed to have accepted any share in the Company unless he has testified his acceptance thereof by writing under his hand in such form as the Company, from time to time, directs

2. The Company may, from time to time, make such calls upon the shareholders, in respect of all moneys unpaid on their shares, as they think fit, provided that twenty-one days' notice at least is given of each call, and each shareholder shall be liable to pay the amount of calls so made to the persons, and at the times and places, appointed by the Company

3. A call shall be deemed to have been made at the time when the resolution authorizing such call was passed

4. If, before or on the day appointed for payment, any shareholder does not pay the amount of any call to which he is liable, then such shareholder shall be liable to pay interest for the same at the rate of 5 per cent per annum from the day appointed for the payment thereof to the time of the actual payment

5. The Company may, if they think fit, receive from any of the shareholders willing to advance the same, all or any part of the moneys due upon their respective shares beyond the sums actually called for, and upon the moneys so paid in advance, or so much thereof as from time to time exceeds the amount of the calls then made upon the shares in respect of which such advance has been made, the Company may pay interest at such rate as the shareholder paying such sum in advance and the Company agree upon

6. If several persons are registered as joint holders of any share, any one of such persons may give effectual receipts for any dividend payable in respect of such share

7. The Company may decline to register any transfer of shares made by a shareholder who is indebted to them.

8. Every shareholder shall, on payment of such sum not exceeding eight annas as the Company may prescribe, be entitled to a certificate, under the common seal of the Company, specifying the share or shares held by him, and the amount paid up thereon.

9. If such certificate is worn out or lost, it may be renewed on payment of such sum, not exceeding eight annas, as the Company may prescribe.

10. The transfer books shall be closed during the fourteen days immediately preceding the ordinary general meeting in each year

* See s. 2 (c) of the Indian Companies Act (VI. of 1882), *supra*, p. 10. The table is reproduced here as an Appendix to Act VI. of 1882 for convenience of reference.

133. No interest is payable on the arrears of an annuity within the first year from the death of the testator, although a period earlier than the expiration of that year may have been fixed by the will for making the first payment of the annuity.

No interest on arrears of annuity within first year after testator's death.

134. Where a sum of money is directed to be invested to produce an annuity, interest is payable on it from the death of the testator.

Interest on sum to be invested to produce annuity.

CHAPTER XII.

OF THE REFUNDING OF LEGACIES.*

135. An executor who has paid a legacy under the order of a Judge is entitled to call upon the legatee to refund in the event of the assets proving insufficient to pay all the legacies.

Refund of legacy paid under Judge's orders.

136. When an executor has voluntarily paid a legacy, he cannot call upon a legatee to refund in the event of the assets proving insufficient to pay all the legacies.

No refund if paid voluntarily.

137. When the time prescribed by the will for the performance of a condition has elapsed, without the condition having been performed, and the executor has thereupon, without fraud, distributed the assets, in such case, if further time has, under the second clause of this section, been allowed for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the executor, but those to whom he has paid it are liable to refund the amount.

Refund when legacy becomes due on performance of condition within further time allowed.

Where the will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed, or as a condition upon the non-fulfilment of which the subject-matter of the bequest is to go over to another person, or the bequest is to cease to have effect, the act must be

* Compare Act X. of 1865, Pt XXXIX. The provisions in Ch XII. as to an executor apply also to an administrator with the will annexed — See s. 148, *infra*.

feiture of shares on non-payment of calls or otherwise, as if it had been part of the original capital

General Meetings.

23. The first general meeting shall be held at such time, not being more than twelve months after the incorporation of the Company, and at such place as the directors may determine.

24. Subsequent general meetings shall be held at such time and place as may be prescribed by the Company in general meeting, and, if no other time or place is prescribed, a general meeting shall be held on the "first Monday in February" in every year, at such place as may be determined by the directors

25. The above-mentioned general meetings shall be called ordinary meetings, all other general meetings shall be called extraordinary

26. The directors may, whenever they think fit, and they shall upon a requisition made in writing by any number of shareholders holding in the aggregate not less than one-fifth part of the shares of the Company, convene an extraordinary general meeting

27. Any requisition so made by the shareholders shall express the object of the meeting proposed to be called, and shall be left at the registered office of the Company

28. Upon the receipt of such requisition, the directors shall forthwith proceed to convene a general meeting, if they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists, or any other shareholders holding the required number of shares, may themselves convene a meeting.

29. Seven days' notice at the least, specifying the place, the time, the hour of meeting, and the purpose for which any general meeting is to be held, shall be given by advertisement, or in such other manner (if any) as may be prescribed by the Company

30. Any shareholder may, on giving not less than three days' previous notice, submit any resolution to a meeting beyond the matters contained in the notice given of such meeting.

31. The notice required of a shareholder shall be given by leaving a copy of the resolution at the registered office of the Company

32. No business shall be transacted at any meeting, except the declaration of a dividend, unless a quorum of shareholders is present at the commencement of such business, and such quorum shall be ascertained as follows (that is to say): If the shareholders belonging to the Company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten, there shall be added to the above quorum one for every five additional shareholders up to fifty, and one for every ten additional shareholders after fifty with this limitation that it shall not be necessary for any quorum in any case to exceed forty.

* The portion quoted had originally been as follows: " day of ".

the assets have subsequently become deficient by the wasting of the executor.

142. If the assets were not sufficient to satisfy all the legacies

When unsatisfied legatee at the time of the testator's death, a must first proceed against legatee who has not received payment executor, if solvent of his legacy must, before he can call on a satisfied legatee to refund, first proceed against the executor, if he is solvent, but, if the executor is insolvent, or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.

143 The refunding of one legatee to another shall not ex-

Limit to refunding of one exceed the sum by which the satisfied legatee to another. legacy ought to have been reduced if the estate had been properly administered.

Illustration.

A has bequeathed 240 rupees to B, 480 rupees to C, and 720 rupees to D. The assets are only 1,200 rupees, and, if properly administered, would give 200 rupees to B, 400 rupees to C, and 600 rupees to D. C and D have been paid their legacies in full, leaving nothing to B. B can oblige C to refund 80 rupees, and D to refund 120 rupees.

Refunding to be without interest.

144. The refunding shall in all cases be without interest.

145. The surplus or residue of the deceased's property, after

Residue after usual payments to be paid to residuary legatee. payment of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the will.

145A.* Where a person not having his domicile in British

Transfer of assets from British India to executor or administrator in country of domicile for distribution. India has died, leaving assets both in British India, and in the country in which he had his domicile at the time of his death, and there have been a grant of probate or letters of administration in British India with respect to the assets there and a grant of administration in the country of domicile with respect to the assets in that country, the executor or administrator, as the case may be, in British India, after having given such notices as are mentioned in section 139, and after

* S 145A has been inserted by the Probate and Administration Act (II. of 1890), s 16.

office of the Company not less than forty eight hours before the time of holding the meeting at which he proposes to vote, but no instrument appointing a proxy shall be valid after the expiration of one month from the date of its execution.

Directors.

45 The number of the directors, and the names of the first directors, shall be determined by the subscribers of the Memorandum of Association.

46. Until directors are appointed, the subscribers of the Memorandum of Association shall, for all the purposes of this Act, be deemed to be directors.

Powers of Directors.

47. The business of the Company shall be managed by the directors, who may exercise all such powers of the Company as are not by this Act,* or by the articles of Association (if any), declared to be exercisable by the Company in general meeting, subject nevertheless to any regulations of the Articles of Association to the provisions of this Act,* and to such regulations, not being inconsistent with the aforesaid regulations or provisions, as may be prescribed by the Company in general meeting, but no regulation made by the Company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made

Disqualification of Directors.

48. The office of director shall be vacated—
 if he holds any other office or place of profit under the Company ;
 if he becomes bankrupt or insolvent ,
 if he is concerned in, or participates in the profits of, any contract with the Company ,
 if he participates in the profits of any work done for the Company.

But the above rules shall be subject to the following exceptions : that no director shall vacate his office by reason of his being a shareholder in any incorporated Company which has entered into contracts with or done any work for the Company of which he is director ; nevertheless he shall not vote in respect of such contract or work, and, if he does so vote, his vote shall not be counted, and he shall incur a penalty not exceeding five hundred rupees.

Rotation of Directors.

49 At the first ordinary meeting after the incorporation of the Company, the whole of the directors shall retire from office, and, at the first ordinary meeting in every subsequent year, one-third of the directors for

* Should now be read as referring to Act VI of 1882, *supra*

CHAPTER XIV.

MISCELLANEOUS.

148. In Chapters VIII, IX., X., and XII. of this Act, the Provisions applied to administrators with will annexed. provisions as to an executor shall apply also to an administrator with the will annexed.

149. Nothing herein contained shall—
Saving clause.

(a) validate any testamentary disposition which would otherwise have been invalid;

(b) invalidate any such disposition which would otherwise have been valid;

(c) deprive any person of any right of maintenance to which he would otherwise have been entitled; or

(d) affect the rights, duties, and privileges of the Administrator-General of Bengal, Madras, or Bombay.*

150. No proceedings to obtain probate of a will or letters of administration to the estate of any Hindu, Muhammadan, Buddhist, or person exempted under section 332 of the Indian Succession Act, 1865,† shall be instituted in any Court in British India except under this Act.

Probate and administration in case of persons exempted from Succession Act to be granted only under this Act.

151. [*Repeal of portions of Act XXVII. of 1860.*] *Repealed by the Succession Certificate Act (VII. of 1889).*

152. The grant of probate or letters of administration under this Act, in respect of any property, shall be deemed to supersede any certificate previously granted in respect of the same property under‡ Act No. XXVII. of 1860,§ or Bombay Regulation No. VIII. of 1827; and when, at the time of the grant of such probate or letters, any suit or other proceeding instituted by the holder of such

Grant of probate or administration to supersede certificate under Act XXVII. of 1860 or Bombay Regulation VIII. of 1827.

* See Act II. of 1874.

† Act X. of 1865.

‡ Here the words "the said," being repealed by the Repealing and Amending Act (XII. of 1891), have been omitted.

§ Act XXVII. of 1860 has been repealed by the Succession Certificate Act (VII. of 1889), but see saving in s. 2 of the latter Act.

members present; and, in case of an equal division of votes, the chairman shall have a casting vote.

61. All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

62 The directors shall cause minutes to be made in books provided for the purpose—

- (1) of all appointments of officers made by the directors,
- (2) of the names of the directors present at each meeting of directors and committees of directors,
- (3) of all orders made by the directors and committees of directors; and
- (4) of all resolutions and proceedings of meetings of the Company, and of the directors and committees of directors

And any such minute as aforesaid, if signed by any person purporting to be the chairman of any meeting of directors, or committee of directors, shall be receivable in evidence without any further proof.

63 The Company, in general meeting, may, by a special resolution, remove any director before the expiration of his period of office, and appoint another qualified person in his stead, the person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.

Dividends.

64 The directors may, with the sanction of the Company in general meeting, declare a dividend to be paid to the shareholders in proportion to their shares

65 The directors may, before recommending any dividend, set aside out of the profits of the Company such sum as they think proper as a reserved fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining the works connected with the business of the Company, or any part thereof, and the directors may invest the sum so set apart as a reserved fund upon such securities as they, with the sanction of the Company, may select

66 The directors may deduct from the dividends payable to any shareholder all such sums of money as may be due from him to the Company on account of calls or otherwise

67 Notice of any dividend that may have been declared shall be given to each shareholder, or sent by post or otherwise to his registered place of abode, and all dividends unclaimed for three years, after having been declared, may be forfeited by the directors for the benefit of the Company.

68. No dividend shall bear interest as against the Company.

157.* (1) When a grant of probate or letters of administra-

Surrender of revoked pro-
bate or letters of administra-
tion.

tion is revoked or annulled under this Act, the person to whom the grant was made shall forthwith deliver up the probate or letters to the Court which made the grant.

(2) If such person wilfully, and without sufficient cause, omits so to deliver up the probate or letters, he shall be punished with fine which may extend to one thousand rupees, or with imprisonment which may extend to three months, or with both.

* S. 157 has been added by the Probate and Administration Act (VI. of 1889), s. 17.

80. If no election of auditors is made in manner aforesaid, the Local Government may, on the application of one-fifth in number of the shareholders of the Company, appoint an auditor for the current year, and fix the remuneration to be paid to him by the Company for his services

81. Every auditor shall be supplied with a copy of the balance-sheet, and it shall be his duty to examine the same with the accounts and vouchers relating thereto

82. Every auditor shall have a list delivered to him of all books kept by the Company, and he shall, at all reasonable times, have access to the books and accounts of the Company, he may, at the expense of the Company, employ accountants or other persons to assist him in investigating such accounts, and he may, in relation to such accounts, examine the directors or any other officer of the Company.

83. The auditors shall make a report to the shareholders upon the balance-sheet and accounts, and, in every such report, they shall state whether, in their opinion, the balance-sheet is a full and fair balance-sheet, containing the particulars required by these regulations, and properly drawn up so as to exhibit a true and correct view of the state of the Company's affairs, and, in case they have called for explanations or information from the directors, whether such explanations or information have been given by the directors, and whether they have been satisfactory, and such report shall be read, together with the report of the directors, at the ordinary meeting.

Notices.

84. Notices requiring to be served by the Company upon the shareholders may be served either personally, or by leaving the same or sending them through the post in a letter addressed to the shareholders at their registered places of abode.

85. All notices directed to be given to the shareholders shall, with respect to any share to which persons are jointly entitled, be given to whichever of the said persons is named first in the register of shareholders; and notice so given shall be sufficient notice to all the proprietors of such share

THE PROVINCIAL INSOLVENCY ACT 1907

(Act No. III. of 1907).

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Act III, 1907.—I.

REFERRED TO IN TABLE B.

Company made up to

18 .

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the foregoing Table B.

THE PROVINCIAL INSOLVENCY (Act No. III. of 1907)

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL

Received His Excellency's Assent on the 15th March 1907.

An Act to consolidate and amend the Law relating to Insolvency in British India, as administered by Courts having Jurisdiction outside the Presidency-towns and the Town of Rangoon.

WHEREAS it is expedient to consolidate and amend the law relating to insolvency in British India as administered by Courts having jurisdiction outside the Presidency-towns and the Town of Rangoon ; It is hereby enacted as follows :—

Short title, extent, and commencement.

1. (1) This Act may be called the Provincial Insolvency Act, 1907 :

(2) It extends to the whole of British India except the Scheduled Districts : and

(3) It shall come into force on the first day of January 1908.

Definitions.

2. (1) In this Act, unless there is anything repugnant in the subject or context,—

(a) "available act of insolvency" means any act of insolvency available for an insolvency-petition at the date of the presentation of the petition on which the order of adjudication is made :

(b) creditor" includes a decree-holder, "debt" includes a judgment-debt, and "debtor" includes a judgment-debtor :

(c) "District Court" means the principal Civil Court of original jurisdiction in any area outside the local limits for the time being of the Presidency-towns, and of the Town of Rangoon :

(d) "prescribed" means prescribed by rules made under this Act :

4. Subject to the provisions of this Act, a Company registered under the Indian Companies Act, 1882,* may, by special resolution, alter the provisions of its memorandum of association or deed of settlement with respect to the objects of the Company, so far as may be required for any of the purposes hereinafter specified, or alter the form of its constitution by substituting a memorandum and articles of association for a deed of settlement, either with or without any such alteration as aforesaid with respect to the objects of the Company; but in no case shall any such alteration take effect until confirmed on petition by the High Court.

Power for Company to alter objects or form of constitution subject to confirmation by High Court.

5. Before confirming any such alteration, the High Court must be satisfied—

(a) that sufficient notice has been given to every holder of debentures or debenture stock of the Company, and every person or class of persons whose interests will, in the opinion of the Court, be affected by the alteration; and

(b) that, with respect to every creditor, who, in the opinion of the Court, is entitled to object, and who signifies his objection in manner directed by the Court, either his consent to the alteration has been obtained, or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of the Court:

Provided that the Court may, in the case of any person or class of persons, for special reasons, dispense with the notice required by this section.

6. An order confirming any such alteration may be made on such terms and subject to such conditions as to the Court may seem fit, and the Court may make such orders as to costs as it may deem proper.

Power of Court when confirming to impose terms and make order as to costs.

7. The High Court shall, in exercising its discretion under this Act, have regard to the rights and interests of the members of the Com-

Discretion conferred on Court.

* Act VI. of 1882, *supra*.

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- (d) if, with intent to defeat or delay his creditors,—
- (z) he departs or remains out of British India,
- (u) he departs from his dwelling-house or usual place of business, or otherwise absents himself,
- (iii) he secludes himself so as to deprive his creditors of the means of communicating with him;
- (e) if any of his property has been sold in execution of the decree of any Court for the payment of money;
- (f) if he petitions to be adjudged as insolvent under the provisions of this Act;
- (g) if he gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts;
- (h) if he is imprisoned in execution of the decree of any Court for the payment of money.

Explanation.—For the purposes of this section, the act of an agent may be the act of the principal.

5. Subject to the conditions specified in this Act, if a debtor commits an act of insolvency, an insolvency-petition may be presented, either by a creditor or by the debtor, and the Court may, on such petition, make an order (hereinafter called an order of adjudication) adjudging him an insolvent.

Explanation.—The presentation of a petition by the debtor shall be deemed an act of insolvency within the meaning of this section, and, on such petition, the Court may make an order of adjudication.

6. (1) Every insolvency-petition shall be in writing, and shall be signed and verified in the manner prescribed by the Code of Civil Procedure* for signing and verifying plaints, and the procedure laid down by the said Code with respect to the admission of plaints shall, so far as it is applicable, be followed in the case of such petitions.

(2) Every insolvency-petition shall be presented to a Court having jurisdiction under this Act in any local area in which the debtor ordinarily resides or carries on business, or personally works.

* Act V. of 1908.

altered, or together with a printed copy of the substituted memorandum and articles of association (as the case may be), shall be delivered by the Company to the Registrar of Joint Stock Companies within three months from the date of the order, and the Registrar shall register the same, and shall certify under his hand the registration thereof, and his certificate shall be conclusive evidence that all the requisitions of this Act with respect to such alteration and the confirmation thereof have been complied with.

(2) When any such alteration as aforesaid involves a transfer of the registered office to a part of British India other than that in which the office is at which the Company is registered, a certified copy of the order confirming such change shall be delivered by the Company to the Registrar of Joint Stock Companies in each of such parts, and each of such Registrars shall register the same, and shall certify under his hand the registration thereof, and the Registrar for the part from which such office is transferred shall send to the Registrar for the other part all documents relating to the Company registered in his office.

(3) From the date of such registration (but subject to the provisions of this Act) the memorandum or deed of settlement so altered shall be the memorandum of association or deed of settlement of the Company, or, as the case may be, such substituted memorandum and articles of association shall apply to the Company in the same manner as if the Company were a Company registered under Part I. of the Indian Companies Act, 1882,* with such memorandum and articles of association, and the Company's deed of settlement shall cease to apply to the Company.

(4) For every registration under this section, there shall be payable to the Registrar of Joint Stock Companies a fee of five rupees.

10. No such alteration as aforesaid shall have any operation until registration thereof has been duly effected under the last-foregoing section, and, if such registration shall not have been effected within three months next after the date of the order of the Court confirming the alteration, such alteration and order and all proceedings connected therewith shall, at the expiration of such period of three months, become and be absolutely null and void:

* Act VI. of 1882, *supra*.

joint debtors, the Court may consolidate the proceedings or any of them on such terms as the Court thinks fit.

9. Where the petitioner does not proceed with due diligence on his petition, the Court may substitute as petitioner any other creditor to whom the debtor may be indebted in the amount required by this Act in the case of a petitioning creditor.

10. If a debtor, by or against whom an insolvency-petition has been presented, dies, the proceedings in the matter shall, unless the Court otherwise orders, be continued as if he were alive.

11. (1) Every insolvency-petition presented by a debtor shall contain the following particulars, namely—

Contents of petition.

- (a) a statement that the debtor is unable to pay his debts ;
- (b) the place where he ordinarily resides or carries on business, or personally works for gain, or, if he has been arrested or imprisoned, the place where he is in custody ;
- (c) the Court (if any) by whose order he has been arrested or imprisoned, or by which an order has been made for the attachment of his property, together with particulars of the decree in respect of which any such order has been made ;
- (d) the amount and particulars of all pecuniary claims against him, together with the names and residences of his creditors, so far as they are known to, or can, by the exercise of reasonable care and diligence, be ascertained by, him ;
- (e) the amount and particulars of all his property, together with—
 - (i) a specification of the value of all such property not consisting of money ;
 - (ii) the place or places at which any such property is to be found ; and

APPENDIX III.

ACT NO. IV. OF 1900

[The Indian Companies (Branch Registers) Act, 1900].*

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received His Excellency's Assent on the 16th February 1900.)

An Act to authorize certain Companies registered under the Indian Companies Act, 1882,† to keep Branch Registers of their Members in the United Kingdom.

WHEREAS it is expedient to authorize certain Companies registered under the Indian Companies Act, 1882,† to keep branch registers of their members in the United Kingdom; It is hereby enacted as follows :—

Short title, extent, and commencement.

1. (1) This Act may be called the Indian Companies (Branch Registers) Act, 1900;

(2) It extends to the whole of British India; and

(3) It shall come into force at once.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) the expression "Company" means a Company registered under the Indian Companies Act, 1882,† having its capital divided into shares; and

(b) the expression "shares" includes stock.

* For Statement of Objects and Reasons, see Gazette of India, 1899, Pt V p 74, for Report of the Select Committee, see *ibid.*, 1900, p 37; for Proceedings in Council, see *ibid.*, 1900, Pt. VI, p. 185; *ibid.*, 1900, pp. 10 and 40.

† Act VI. of 1882 *supra*.

by the Code of Civil Procedure,* or by any other enactment for the time being in force, from liability to attachment and sale in execution of a decree,

- (4) order a warrant to issue, with or without bail for the arrest of the debtor, and direct either that he be detained in the civil prison until the disposal of the petition, or that he be released on such terms as to security as may be reasonable and necessary:

Provided that an order under clause (2), clause (3), or clause (4) shall not be made unless the Court is satisfied that the debtor, with intent to defeat or delay his creditors, or to avoid any process of the Court,—

- (2) has absconded or has departed from the local limits of the jurisdiction of the Court, or is about to abscond or to depart from such limits, or is remaining outside them, or
- (22) has failed to disclose, or has concealed, destroyed, transferred, or removed from such limits, or is about to conceal, destroy, transfer, or remove from such limits, any documents likely to be of use to his creditors in the course of the hearing, or any part of his property other than such particulars as aforesaid.

14 (1) On the day fixed for the hearing of the petition, or on any subsequent day to which the hearing may be adjourned, the Court shall require proof—

- (a) that the creditor or the debtor, as the case may be, is entitled to present the petition,
- (b) that the debtor, if he does not appear on a petition presented by a creditor, has been served with notice of the order referred to in section 12, sub-section (1), and
- (c) that the debtor has committed the act of insolvency alleged against him.

(2) The Court shall also examine the debtor, if he is present, as to his conduct, dealings, and property in the presence of such creditors as appear at the hearing, and the creditors shall have the right to question the debtor thereon.

* Act V of 1908

4. The Governor-General in Council may, by notification in the *Gazette of India*, make rules and prescribe forms for the purpose of carrying into effect the provisions of this Act.

5. This Act shall, so far as is consistent with the tenor thereof, be construed as one with the Indian Companies Act, 1882.*

* Act VI. of 1882, *supra*.

of 1907.]

PROVINCIAL INSOLVENCY.

(2) the insolvent, if in prison for debt, shall be released; and thereafter, except as provided by this Act, no creditor to whom the insolvent is indebted in respect of any debt provable under this Act shall, during the pendency of the insolvency-proceedings, have any remedy against the property or person of the insolvent in respect of the debt, or commence any suit or other legal proceeding, except with the leave of the Court, and on such terms as the Court may impose.

(3) For the purposes of sub-section (2), clause (a), all goods being, at the date of the presentation of the petition on which the order is made, in the possession, order, or disposition of the insolvent in his trade or business, by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof, shall be deemed to be the property of the insolvent.

(4) All such property as may be acquired by, or devolve on, the insolvent after the date of an order of adjudication, and before his discharge, shall forthwith vest in the Court or receiver, and become divisible among the creditors in accordance with the provisions of sub section (2), clause (a).

(5) Nothing in this section shall affect the power of any secured creditor to realize or otherwise deal with his security in the same manner as he would have been entitled to realize or deal with it if this section had not been passed.

(6) An order of adjudication shall relate back to, and take effect from, the date of the presentation of the petition on which it is made.

(7) Notice of an order of adjudication stating the name, address, and description of the insolvent, the date of the adjudication, and the Court by which the adjudication is made, shall be published in the local official Gazette, and in such other manner as may be prescribed.

17. If, in any case in which an order of adjudication has been made, it shall be proved to the Court by which such order was made that insolvency-proceedings are pending in another Court against the same debtor, and that the property of the debtor can be more conveniently distributed by such other Court, the Court may rescind the order of adjudication, and stay all proceedings, or dismiss the petition on such terms (if any) as the Court thinks fit.

SECTIONS.

- 25 Agreement without consideration void unless—
it is in writing and registered,
or is a promise to compensate for something done,
or is a promise to pay a debt barred by Limitation Law
26. Agreement in restraint of marriage void
27. Agreement in restraint of trade void.
Saving of agreement not to carry on business of which good-will is sold,
of agreement between partners prior to dissolution,
or during continuance of partnership
28. Agreements in restraint of legal proceedings void
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(3) Any sum payable under section 18, sub-section (2), clause (b), in respect of the services of an Official Receiver, shall be credited to such fund as the Local Government may direct.

(4) Every Official Receiver shall receive such remuneration out of the said fund or otherwise as the Local Government may fix in this behalf, and no remuneration whatever beyond that so fixed shall be received by the Official Receiver as such.

20. Subject to the provisions of this Act the receiver shall, with Duties and powers of receiver. all convenient speed, realize the property of the debtor, and distribute dividends among the creditors entitled thereto, and for that purpose may—

(a) sell all or any part of the property of the insolvent ;

(b) give receipts for any money received by him ;

and may, by leave of the Court, do all or any of the following things, namely—

(c) carry on the business of the insolvent so far as may be necessary for the beneficial winding-up of the same ;

(d) institute, defend, or continue any suit or other legal proceeding relating to the property of the insolvent ;

(e) employ a pleader or other agent to take any proceedings, or do any business, which may be sanctioned by the Court ;

(f) accept, as the consideration for the sale of any property of the insolvent, a sum of money payable at a future time subject to such stipulations as to security and otherwise as the Court thinks fit ;

(g) mortgage or pledge any part of the property of the insolvent for the purpose of raising money for the payment of his debts ;

(h) refer any dispute to arbitration, and compromise all debts, claims, and liabilities, on such terms as may be agreed upon ;

(i) divide in its existing form amongst the creditors, according to its estimated value, any property which, from its peculiar nature or other special circumstances, cannot readily or advantageously be sold.

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23. Where no receiver is appointed, the Court shall have all the rights of, and may exercise all the powers conferred on, a receiver under this Act.

Powers of Court if no receiver appointed.

24. (1) All persons alleging themselves to be creditors of the insolvent in respect of debts provable under this Act shall tender proof of their respective debts by producing evidence of the amount and particulars thereof, and the Court shall, by order, determine the persons who have proved themselves to be creditors of the insolvent in respect of such debts, and the amount of such debts respectively, and shall frame a schedule of such persons and debts :

Schedule of creditors.

Provided that, if, in the opinion of the Court, the value of any debt is incapable of being fairly estimated, the Court may make an order to that effect, and thereupon the debt shall not be included in the schedule.

(2) A copy of every such schedule shall be posted in the Court-house.

(3) Any creditor of the insolvent may, at any time before the discharge of the insolvent, tender proof of his debt, and apply to the Court for an order directing his name to be entered in the schedule as a creditor in respect of any debt provable under this Act, and not entered in the schedule, and the Court, after causing notice to be served on the insolvent and the other creditors, and, hearing their objections (if any), shall comply with or reject the application.

25. (1) A debt may be proved under this Act by delivering, or sending by post in a registered letter, to the Court, an affidavit verifying the debt.

Mode of proof.

(2) The affidavit shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers (if any) by which the same can be substantiated. The Court may at any time call for the production of the vouchers.

26. (1) Where the receiver thinks that a debt has been improperly entered in the schedule, the Court may, on the application of the receiver, and after notice to the creditor, and such inquiry (if any) as the Court thinks necessary, expunge such entry, or reduce the amount of the debt.

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Suits by Bailees or Bailors against Wrong-doers

- 180. Suit by bailor or bailee against wrong-doer
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(8) If default is made in the payment of any instalment due in pursuance of the composition or scheme, or if it appears to the Court that the composition or scheme cannot proceed without injustice or undue delay, or that the approval of the Court was obtained by fraud, the Court may, if it thinks fit, adjudge the debtor insolvent, and annul the composition or scheme, but without prejudice to the validity of any transfer or payment duly made, or of anything duly done under or in pursuance of the composition or scheme. When a debtor is adjudged insolvent under this subsection, all debts provable in other respects which have been contracted before the date of such adjudication shall be provable in the insolvency.

(9) No composition or scheme shall be approved by the Court which does not provide for the payment, in priority to other debts, of all debts directed to be so paid in the distribution of the property of an insolvent.

28. (1) Save as provided by sub-section (2), all debts and liabilities, present or future, certain or contingent, to which the debtor is subject when he is adjudged an insolvent, or to which he may become subject before his discharge by reason of any obligation incurred before the date of such adjudication, shall be deemed to be debts provable under this Act.

(2) Demands in the nature of unliquidated damages arising otherwise than by reason of a contract or breach of trust shall not be provable under this Act.

29. A creditor may prove for a debt not payable when the debtor is adjudged an insolvent as if it were payable presently, and may receive dividends equally with the other creditors, deducting therefrom only a rebate of interest, at the rate of six per centum per annum computed from the declaration of a dividend to the time when the debt would have become payable, according to the terms on which it was contracted.

30. Where there have been mutual dealings between an insolvent and a creditor proving or claiming to prove a debt under this Act, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off against any sum due from the other.

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222. Agent to be indemnified against consequences of lawful acts
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 242. Servant or agent remunerated by share of profits not a partner.
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 245. Responsibility of person leading another to believe him a partner
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 247. Minor partner not personally liable, but his share is.
 248. Liability of minor partner on attaining majority
 249. Partner's liability for debts of partnership
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 251. Partner's power to bind co-partners.
 252. Annulment of contract defining partner's rights and obligations

(2) Where a debt which has been proved under this Act includes interest or any pecuniary consideration in lieu of interest, the interest or consideration shall, for the purposes of dividend, be calculated at a rate not exceeding six per centum per annum, without prejudice to the right of a creditor to receive out of the debtor's estate any higher rate of interest to which he may be entitled after all the debts proved have been paid in full.

· Priority of debts.

33. (1) In the distribution of the property of the insolvent, there shall be paid in priority to all other debts—

(a) all debts due to the Crown or to any local authority ; and

(b) all salary or wages, not exceeding twenty rupees in all, of any clerk, servant, or labourer in respect of services rendered to the insolvent during four months before the date of the presentation of the petition.

(2) The debts specified in sub-section (1) shall rank equally between themselves, and shall be paid in full, unless the property of the insolvent is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(3) Subject to the retention of such sums as may be necessary for the expenses of administration or otherwise, the debts specified in sub-section (1) shall be discharged forthwith in so far as the property of the insolvent is sufficient to meet them.

(4) In the case of partners, the partnership-property shall be applicable in the first instance in payment of the partnership-debts, and the separate property of each partner shall be applicable in the first instance in payment of his separate debts. Where there is a surplus of the separate property of the partners, it shall be dealt with as part of the partnership-property ; and, where there is a surplus of the partnership-property, it shall be dealt with as part of the respective separate property in proportion to the rights and interests of each partner in the partnership-property.

(5) Subject to the provisions of this Act, all debts entered in the schedule shall be paid rateably according to the amounts of such debts respectively, and without any preference.

(6) Where there is any surplus after payment of the foregoing debts, it shall be applied in payment of interest from the date on which the debtor is adjudged an insolvent at the rate of six per centum per annum on all debts entered in the schedule.

THE INDIAN CONTRACT ACT, 1872

(Act IX. of 1872).*

[As modified up to Act VI. of 1899]

RECEIVED THE G.-G.'S ASSENT ON THE 25TH APRIL 1872.

WHEREAS it is expedient to define and amend certain parts of the law relating to contracts; It is hereby enacted as follows.—

Preamble

PRELIMINARY.

Short title.

1. This Act may be called "The Indian Contract Act, 1872."

Extent.

It extends to the whole of British India;† and it shall come into force on the first day of September, 1872.

Commencement

* For the Statement of Objects and Reasons for the Bill, which was based on a Report of Her Majesty's Commissioners, appointed to prepare a body of substantive law for India, dated July 6, 1865, see *Gazette of India*, 1867, Extraordinary, p. 31. For the Report of the Select Committee, see *ibid.*, 1871, p. 313, and *ibid.*, 1872, p. 527.

The chapters and sections of the Transfer of Property Act (IV of 1882) which relate to contracts are, in place, in which that Act is in force, to be taken as part of Act IX of 1872.—See Act IV, of 1882, s. 4.

† Act IX. of 1872 has been declared in force in—

- (1) the Santhal Parganas [see the Santhal Parganas Settlement Regulation (III. of 1872) as amended by the Santhal Parganas Laws Regulation (III of 1899), s. 3];
- (2) the Arakan Hill District [see the Arakan Hill District Laws Regulation (IX. of 1874), s. 3],
- (3) Upper Burma (except the Shan States) by Act XIII of 1893, s. 4,
- (4) British Baluchistan [see the British Baluchistan Laws Regulation (I of 1890), s. 3].

Act IX of 1872 has been declared, by notification under s. 3 (a) of the Scheduled Districts Act (XIV of 1874), to be in force in—

- (1) the North-Western Provinces Tarai (see *Gazette of India*, 1876, Pt. I., p. 505),
- (2) the Districts of Haveribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singbhum (see *Gazette of India*, 1881, Pt. I., p. 504). The District of Lohardaga included at this time the present District of Palamanu, which was separated in 1894.

Act IX. of 1872 has been extended, by notification under s. 5 of the Scheduled Districts Act (XIV. of 1874), to the whole of Upper Burma, except the Shan States (see *Gazette of India*, 1893, Pt. II, p. 278).

(2) This section shall not affect the rights of any person who, in good faith and for valuable consideration, has acquired a title through or under a creditor of the insolvent.

38. Subject to the foregoing provisions of this Act, with respect to the effect of insolvency on an execution, and with respect to the avoidance of certain transfers and preferences, nothing in this Act shall invalidate, in the case of an insolvency,—

- (a) any payment by the insolvent to any of his creditors;
- (b) any payment or delivery to the insolvent;
- (c) any transfer by the insolvent for valuable consideration; or
- (d) any contract or dealing by or with the insolvent for valuable consideration :

Provided that any such transaction takes place before the date of the order of adjudication.

39. (1) In the calculation of dividends, the receiver shall retain in his hands sufficient assets to meet—

Dividends.

- (a) debts provable under this Act, and appearing, from the insolvent's statements or otherwise, to be due to persons resident in places so distant that, in the ordinary course of communication, they have not had sufficient time to tender their proofs;
- (b) debts provable under this Act, the subject of claims not yet determined;
- (c) disputed proofs or claims; and
- (d) the expenses necessary for the administration of the estate or otherwise.

(2) Subject to the provisions of sub-section (1), all money in hand shall be distributed as dividends.

(3) Any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid, out of any money for the time being in the hands of the receiver, any dividend or dividends which he may have failed to receive before that money is applied to the payment of any future dividend or dividends; but he shall not be entitled to disturb the distribution

ed. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise; but, if he fails to do so, he accepts the acceptance.

8. Performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal.

Acceptance by performing conditions or receiving consideration.

9. In so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

Promises, express and implied.

CHAPTER II.

OF CONTRACTS, VOIDABLE CONTRACTS, AND VOID AGREEMENTS.

10. All agreements are contracts* if they are made by the free consent of parties competent to contract for a lawful consideration,† and with a lawful object, and are not hereby expressly declared to be void.

What agreements are contracts.

Nothing herein contained shall affect any law in force in British India, and not hereby expressly repealed, by which any contract is required to be made in writing ‡ or in the presence of witnesses, or any law relating to the registration of documents §

* See s. 2, cl (h), *supra*

† See s. 25, Expl 2, and s. 102, *infra*.

‡ See, for example, the following :—

(1) s. 25, *infra*,

(2) the Indian Copyright Act (XX of 1847), s. 5;

(3) the Conveyances of Land Act (XXXI of 1854), ss. 14, 18,

(4) the Merchant Shipping Act (57 & 58 Vict., c. 60), s. 24;

(5) the Presidency Banks Act (XI of 1876), s. 9,

(6) the Transfer of Property Act (IV. of 1882), ss. 54, 59, 107, 123;

(7) the Indian Companies Act (VI. of 1882), ss. 6, 39, 46, 67,

(8) the Apprentices Act (XIX. of 1850), s. 8

Cf. also s. 4 of the Workmen's Breach of Contract Act (XIII. of 1859), and the Carriers Act (III. of 1865), ss. 6, 7.

§ See now the Indian Registration Act (III. of 1877).

the Court that the debts of the insolvent have been paid in full, or where a composition or scheme has been approved by the Court under section 27, the Court shall, on the application of the debtor, or of any other person interested, by order in writing, annul the adjudication.

(2) Where an adjudication is annulled under sub-section (1), all sales and dispositions of property and payments duly made, and all acts theretofore done, by the Court or receiver, shall be valid; subject as aforesaid, the property of the debtor who was adjudged insolvent shall vest in such person as the Court may appoint, or, in default of any such appointment, shall revert to the debtor to the extent of his right or interest therein on such conditions (if any) as the Court may, by order in writing, declare.

(3) Notice of every order annulling an adjudication shall be published in the local official Gazette, and in such other manner as may be prescribed.

43. (1) Every debtor, whether before or after the making of an order of adjudication, shall produce all books of account, give such inventories of his property, and such lists of his creditors and debtors, and of the debts due to and from them respectively, submit to such examination in respect of his property or his creditors, attend at such times before the Court or receiver, execute such instruments, and generally give such aid in the realisation of his property and the distribution of the proceeds amongst his creditors as may be required by the Court or receiver, or as may be prescribed.

(2) If a debtor, whether before or after the making of an order of adjudication,—

(a) wilfully makes false entries in the inventories or lists referred to in sub-section (1), or

(b) fraudulently or vexatiously conceals, destroys, transfers, removes, or refuses to produce any property or books of account, or

(c) commits any other act of bad faith in the performance of the duties imposed on him by this section,

the Court may sentence him, by order in writing, to simple imprisonment for a term which may extend to one year; and, in every such case, the Court shall record the facts constituting the offence with the statement (if any) made by the debtor.

Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation, or mistake.

15. "Coercion" is the committing, or threatening to commit, any act forbidden by the Indian Penal Code,* or the unlawful detaining, or threatening to detain, any property to the prejudice of any person whatever with the intention of causing any person to enter into an agreement.

Explanation.—It is immaterial whether the Indian Penal Code* is or not in force in the place where the coercion is employed.

Illustration.

A, on board an English ship on the high seas, causes B to enter into an agreement by an act amounting to criminal intimidation under the Indian Penal Code.

A afterwards sues B for breach of contract at Calcutta :

A has employed coercion, although his act is not an offence by the law of England, and although section 506 of the Indian Penal Code was not in force at the time when, or place where, the act was done

16.† (1) A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other, and uses that position to obtain an unfair advantage over the other.

(a) In particular, and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another—

(a) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other ; or

(b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(g) Where a person who is in a position to dominate the will of another enters into a contract with him, and the transaction

* Act XLV. of 1860.

† S. 16 has been substituted for the original by the Indian Contract Act Amendment Act (VI. of 1899), s. 2.

- (e) that the insolvent has failed to account satisfactorily for any loss of assets, or for any deficiency of assets, to meet his liabilities ;
- (f) that the insolvent has brought on, or contributed to, his insolvency by rash and hazardous speculations, or by unjustifiable extravagance in living, or by gambling, or by culpable neglect of his business-affairs ;
- (g) that the insolvent has, within three months preceding the date of the presentation of the petition, when unable to pay his debts as they become due, given an undue preference to any of his creditors ;
- (h) that the insolvent has on any previous occasion been adjudged an insolvent or made a composition or arrangement with his creditors ;
- (i) that the insolvent has concealed or removed his property or any part thereof, or has been guilty of any other fraud or fraudulent breach of trust.

(4) For the purposes of this section, the report of the receiver shall be deemed to be evidence ; and the Court may presume the correctness of any statement contained therein.

(5) The powers of suspending and of attaching conditions to an insolvent's discharge may be exercised concurrently.

Effect of order of discharge. **45. (1)** An order of discharge shall not release the insolvent from—

- (a) any debt due to the Crown ;
- (b) any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party ; or
- (c) any debt or liability in respect of which he has obtained forbearance by any fraud to which he was a party.

(2) Save as otherwise provided by sub-section (1), an order of discharge shall release the insolvent from all debts entered in the schedule.

(3) An order of discharge shall not release any person who, at the date of the presentation of the petition, was a partner or co-trustee with the insolvent, or was jointly bound or had made any joint contract with him or any person who was surety for him.

the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak,* or unless his silence is, in itself, equivalent to speech.

Illustrations.

(a) A sells, by auction, to B, a horse which A knows to be unsound. A says nothing to B about the horse's unsoundness. This is not fraud in A.

(b) B is A's daughter, and has just come of age. Here, the relation between the parties would make it A's duty to tell B if the horse is unsound.

(c) B says to A, "If you do not deny it, I shall assume that the horse is sound." A says nothing. Here A's silence is equivalent to speech.

(d) A and B, being traders, enter upon a contract. A has private information of a change in prices which would affect B's willingness to proceed with the contract. A is not bound to inform B.

"Misrepresentation" defined.

18. "Misrepresentation" means and includes—

(1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;

(2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice, or to the prejudice of any one claiming under him;

(3) causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

19. When consent to an agreement is caused by coercion,† fraud, or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

A party to a contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.

* See s 143, *supra*.

† In s. 19, the words, "undue influence," have here been omitted, being repealed by the Indian Contract Act Amendment Act (VI. of 1899), s 3.

- (b) the provisions of this Act shall be subject to such other modifications as may be prescribed with the view of saving expense and simplifying procedure :

Provided that nothing in this section shall permit the modification of the provisions of this Act relating to the examination or discharge of the debtor.

49. The costs of any proceeding under this Act, including the costs of maintaining a debtor in the civil prison, shall, subject to any rules made under this Act, be in the discretion of the Court in which the proceeding is had.

50. All Courts having jurisdiction in insolvency and the Courts to be auxiliary to officers of such Courts respectively shall each other. severally act in aid of, and be auxiliary to, each other in all matters of insolvency, and an order of a Court seeking aid with a request to another of the said Courts shall be deemed sufficient to enable the latter Court to exercise, in regard to, the matters directed by the order, such jurisdiction as either of such Courts could exercise in regard to similar matters within their respective jurisdictions.

51. (1) The High Court may, with the previous sanction, in the case of the High Court of Judicature at Fort William in Bengal, of the Governor-General in Council, and, in the case of any other High Court, of the Local Government, make rules for carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide—

- (a) for the appointment and remuneration of receivers (other than Official Receivers), the audit of the accounts of all receivers, and the costs of such audit,
- (b) for meetings of creditors, and
- (c) for the procedure to be followed in the case of estates to be administered in a summary manner.

(3) All rules made under this section shall be published in the *Gazette of India*, or in the local official Gazette, as the case may be, and shall, on such publication, have effect as if enacted in this Act.

Illustrations

(a) A's son has forged B's name to a promissory note. B, under threat of prosecuting A's son, obtains a bond from A for the amount of the forged note. If B sues on this bond, the Court may set the bond aside.

(b) A, a money-lender, advances Rs 100 to B, an agriculturist, and, by undue influence, induces B to execute a bond for Rs 200 with interest at 12 per cent per month. The Court may set the bond aside, ordering B to repay the Rs 100 with such interest as may seem just.

Agreement void where both parties are under mistake as to matter of fact.

20. Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.

Explanation—An erroneous opinion as to the value of the thing which forms the subject-matter of the agreement is not to be deemed a mistake as to a matter of fact.

Illustrations

(a) A agrees to sell to B a specific cargo of goods supposed to be on its way from England to Bombay. It turns out that, before the day of the bargain, the ship conveying the cargo had been cast away, and the goods lost. Neither party was aware of these facts. The agreement is void.

(b) A agrees to buy from B a certain horse. It turns out that the horse was dead at the time of the bargain, though neither party was aware of the fact. The agreement is void.

(c) A, being entitled to an estate for the life of B, agrees to sell it to C. B was dead at the time of the agreement, but both parties were ignorant of the fact. The agreement is void.

21. A contract is not voidable because it was caused by a mistake as to any law in force in British India; but a mistake as to a law not in force in British India has the same effect as a mistake of fact.

Illustration.

A and B make a contract grounded on the erroneous belief that a particular debt is barred by the Indian Law of Limitation. The contract is not voidable.

A and B make a contract grounded on an erroneous belief as to the law regulating bills of exchange in France. The contract is voidable.

Contract caused by mistake of one party as to matter of fact.

22. A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact.

Act in any part of the territories administered by such Local Government, namely—

section 15, sub-sections (2) and (3),

section 16, sub-section (3),

sections 25 to 40 [except sub-section (1), clause (a), and sub-section (4) of section 35],

section 44, sub-sections (3) and (4), and section 53.

Savings.

55. Nothing in this Act shall—

(a) affect the Indian Insolvency Act, 1848,* or section 8 of the Lower Burma Courts Act, 1900,† or

(b) apply to cases to which Chapter IV. of the Dekkhan Agriculturists' Relief Act, 1879,‡ is applicable.

56. (1) The enactments mentioned in the Schedule are hereby repealed to the extent specified in the fourth column thereof.

(2) Where, in any enactment or instrument in force at the date of the commencement of this Act, reference is made to Chapter XX. (OF INSOLVENT JUDGMENT-DEBTORS) or the Code of Civil Procedure, 1877,§ or of the Code of Civil Procedure, 1882,|| or to any section of either of those Chapters, such reference shall, so far as may be practicable, be construed as applying to this Act, or to the corresponding section thereof.

* Stat. 11 & 12 Vict., c. 21.

† Act VI. of 1900.

‡ Act XVII. of 1879.

§ Act X. of 1877.

|| Act XIV. of 1882.

(h) A promises B to drop a prosecution which he has instituted against B for robbery, and B promises to restore the value of the things taken : The agreement is void, as its object is unlawful.

(i) A's estate is sold for arrears of revenue under the provisions of an Act of the Legislature, by which the defaulter is prohibited from purchasing the estate B, upon an understanding with A, becomes the purchaser, and agrees to convey the estate to A upon receiving from him the price which B has paid : The agreement is void, as it renders the transaction in effect, a purchase by the defaulter, and would so defeat the object of the law.

(j) A, who is B's mukhtar, promises to exercise his influence, as such with B in favour of C, and C promises to pay 1,000 rupees to A - The agreement is void, because it is immoral

(k) A agrees to let her daughter to hire to B for concubinage : The agreement is void, because it is immoral, though the letting may not be punishable under the Indian Penal Code,

Void Agreements.

24 If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void.

Agreement void if consideration and objects unlawful in part.

Illustration

A promises to superintend, on behalf of B, a legal manufacture of indigo and an illegal traffic in other articles. B promises to pay to A a salary of 10,000 rupees a year : The agreement is void, the object of A's promise, and the consideration for B's promise, being in part unlawful

Agreement without consideration void unless—

25 An agreement made without consideration is void unless—

(1) it is expressed in writing, and registered under the law for the time being in force for the registration of documents,* and is made on account of natural love and affection between parties standing in a near relation to each other; or unless

* In s 25 the word "documents" has been substituted for the word "assurances" by the Repealing and Amending Act (XII of 1891) For the law relating to the registration of documents, see the Indian Registration Act (III. of 1877).

Agreement in restraint of marriage void.

26. Every agreement in restraint of the marriage of any person other than a minor* is void.

27. Every agreement by which any one is restrained from exercising† a lawful profession, trade, or business of any kind, is to that extent void.

Exception 1.—One who sells the good-will of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits so long as the buyer, or any person deriving title to the good-will from him, carries on a like business therein, provided that such limits appear to the Court reasonable, regard being had to the nature of the business.

Exception. 2—Partners may, upon or in anticipation of a dissolution of the partnership, agree that some or all of them will not carry on a business similar to that of the partnership within such local limits as are referred to in the last-preceding exception.

Exception 3—Partners may agree that some one or all of them will not carry on any business or during continuance of partnership other than that of the partnership during the continuance of the partnership.

28. Every agreement, by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void to that extent.

Exception 1.—This section shall not render illegal a contract by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred

* During his or her minority, as to which see Act IX of 1875

† The words, "restrained from exercising," do not mean an absolute restriction, and are intended to apply to a partial restriction—a restriction limited to some particular place.—*Per Couch, C.J.*, 14 B. L. R. 85.

ACT IX. OF 1887 :

The Provincial Small Cause Courts Act, 1887.*

RECEIVED THE G.G.'S ASSENT ON 24TH FEBRUARY 1887.

An Act to consolidate and amend the Law relating to Courts of Small Causes established beyond the Presidency-towns.

WHEREAS it is expedient to consolidate and amend the law relating to Courts of Small Causes established beyond the local limits, for the time being, of the ordinary original civil jurisdiction of the High Courts of Judicature at Fort William in Bengal and at Madras and Bombay : It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Title, extent, and commencement.

1. (1) This Act may be called the Provincial Small Cause Courts Act 1887 ;

(2) It extends to the whole of British India ; and

(3) It shall come into force on the first day of July 1887.

2. (1) [*Repeal of enactments.—Repealed by Act XII. of 1891.*]

* Act IX. of 1887 has been applied to British Baluchistan by Reg. I. of 1890, s. 3

The Act has been declared, by notification under the Scheduled Districts Act (XIV. of 1874), to be in force in the Districts of Hazaribagh, Lohardaga, and Manbhum, Pargana Dhalbhum and the Kolhan in the District of Singhbhum (*Gazette of India*, 1887, Pt. I, p. 582), and has been extended, by notification under the same Act, to the Town of Mandalay (*Gazette of India*, 1888, Pt. I, p. 88)

For power to confer, upon a Subordinate Judge or Munsif in Bengal, the North-Western Provinces, and Assam, the jurisdiction of a Court of Small Causes under this Act, see Act XII. of 1887, s. 25

Ss 15, 32, 37, 38, 39, and 40 of the Bengal, North-Western Provinces, and Assam Civil Courts Act, 1887, apply to Courts of Small Causes constituted under this Act.—See Act XII. of 1887, s. 40.

80. Agreements by way of wager are void, and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made.

This section shall not be deemed to render unlawful a subscription or contribution, or agreement to subscribe or contribute, made or entered into for or toward any plate, prize, or sum of money, of the value or amount of five hundred rupees or upwards, to be awarded to the winner or winners of any horse-race.*

Nothing in this section shall be deemed to legalize any transaction connected with horse-racing, to which the provisions of section 294A of the Indian Penal Code† apply.

CHAPTER III.

OF CONTINGENT CONTRACTS.

81. A 'contingent contract' is a contract to do or not to do something if some event collateral to such contract does or does not happen defined.

Illustration.

A contracts to pay B Rs 10,000 if B's house is burnt This is a contingent contract

82. Contingent contracts to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event has happened.

Enforcement of contracts contingent on an event happening.

If the event becomes impossible, such contracts become void.

Illustrations

(a) A makes a contract with B to buy B's horse if A survives C = This contract cannot be enforced by law unless and until C dies in A's lifetime.

* Cf the Gaming Act, 1845 (8 & 9 Vict, c 109), s 18.

† Act XLV. of 1860.

CHAPTER II.

CONSTITUTION OF COURTS OF SMALL CAUSES.

5. (1) The Local Government, with the previous sanction of the Governor-General in Council, may, by order in writing, establish a Court of Small Causes at any place within the territories under its administration beyond the local limits, for the time being, of the ordinary original civil jurisdiction of a High Court of Judicature established in a Presidency-town.

(2) The local limits of the jurisdiction of the Court of Small Causes shall be such as the Local Government may define, and the Court may be held at such place or places within those limits, as the Local Government may appoint.

6. (1) When a Court of Small Causes has been established, the Local Government shall, by order in writing, appoint a Judge of the Court.

(2) The Judge may be the Judge of one Court of Small Causes, or of two or more such Courts, as the Local Government directs.

7. (1) A Judge who is the Judge of two or more such Courts may, with the sanction of the District Court, fix the times at which he will sit in each of the Courts of which he is Judge.

(2) Notice of the times shall be published in such manner as the High Court from time to time directs.

8. (1) The Local Government, with the previous sanction of the Governor-General in Council, may, by order in writing, appoint an Additional Judge of a Court of Small Causes, or of two or more such Courts.

(2) The Additional Judge shall discharge such of the functions of the Judge of the Court or Courts as the Judge may assign to him, and, in the discharge of those functions, shall exercise the same powers as the Judge.

(3) The Judge may withdraw from the Additional Judge any business pending before him.

(4) When the Judge is absent, the Additional Judge may discharge all or any of the functions of the Judge.

Illustrations.

(a.) A promises to pay B a sum of money if a certain ship return within a year : The contract may be enforced if the ship returns within the year, and becomes void if the ship is burnt within the year.

(b) A promises to pay B a sum of money if a certain ship does not return within a year The contract may be enforced if the ship does not return within the year, or is burnt within the year.

36. Contingent agreements to do or not to do anything if an Agreements contingent on impossible event happens are void, impossible events void. whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.

Illustrations.

(a) A agrees to pay B 1,000 rupees if two straight lines should enclose a space : The agreement is void.

(b) A agrees to pay B 1,000 rupees if B will marry A's daughter C. C was dead at the time of the agreement . The agreement is void

CHAPTER IV.

OF THE PERFORMANCE OF CONTRACTS.

Contracts which must be performed.

37. The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law.

Promises bind the representatives of the promisors in case of the death of such promisors before performance,* unless a contrary intention appears from the contract.

Illustrations.

(a) A promises to deliver goods to B on a certain day on payment of Rs 1,000 A dies before that day A's representatives are bound to deliver the goods to B, and B is bound to pay the Rs 1,000 to A's representatives.

(b) A promises to paint a picture for B by a certain day at a certain price A dies before the day . The contract cannot be enforced either by A's representatives or by B.

* This probably means "to the extent of the assets received by them as such, and not duly applied"—See *Madho Dass v Radha Mal*, 9 Punjab Record 213

Court, the jurisdiction of a Judge of a Court of Small Causes for the trial of suits of which the value does not exceed twenty rupees.

(4) The Registrar shall try such suits cognizable by him as the Judge may, by general or special order, direct.

(5) A Registrar may be suspended or removed from office by the Local Government.

13. Subject to any enactment for the time being in force, and to any orders made by the Local Government in this behalf, the law or practice for the time being applicable to the appointment, punishment, and transfer of ministerial officers of a Civil Court of the lowest grade competent to try an original suit of the value of five thousand rupees in that portion of the territories administered by the Local Government in which a Court of Small Causes is established shall, so far as it can be made applicable, apply to the appointment, punishment, and transfer of ministerial officers of the Court of Small Causes other than the Registrar (if any) of that Court.

14. (1) The ministerial officers of a Court of Small Causes shall, in addition to any duties mentioned in this Act, or in any other enactment for the time being in force, as duties which are or may be imposed on any of them, discharge such duties of a ministerial nature as the Judge directs.

(2) The High Court may make rules consistent with this Act and with any other enactment for the time being in force, conferring and imposing, on the ministerial officers of a Court of Small Causes, such powers and duties as it thinks fit, and regulating the mode in which powers and duties so conferred and imposed are to be exercised and performed.

CHAPTER III.

JURISDICTION OF COURTS OF SMALL CAUSES.

15. (1) A Court of Small Causes shall not take cognizance of the suits specified in the Second Schedule as suits excepted from the cognizance of a Court of Small Causes.

(2) Subject to the exceptions specified in that Schedule, and to the provisions of any enactment for the time being in force, all

months, and B engages to pay her at the rate of 100 rupees for each night. On the sixth night A wilfully absents herself. With the assent of B, A sings on the seventh night. B has signified his acquiescence in the continuance of the contract, and cannot now put an end to it, but is entitled to compensation for the damage sustained by him through A's failure to sing on the sixth night.

By whom Contracts must be performed.

40. If it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representatives may employ a competent person to perform it.

Illustrations

(a) A promises to pay B a sum of money. A may perform this promise, either by personally paying the money to B, or by causing it to be paid to B by another, and if A dies before the time appointed for payment, his representatives must perform the promise, or employ some proper person to do so.

(b) A promises to paint a picture for B. A must perform this promise personally.

41. When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.

42. When two or more persons have made a joint promise, then (unless a contrary intention appears by the contract) all such persons, during their joint lives, and, after the death of any of them, his representative jointly with the survivor or survivors, and after the death of the last survivor, the representatives of all jointly, must fulfil the promise.

43. When two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any one "or more" of such joint promisors to perform the whole of the promise.

* In s 43, the words "or more" have been inserted by the Repealing and Amending Act (XII. of 1891).

18. (1) Suits cognizable by the Registrar under section 12 sub-sections (3) and (4), shall be tried by him, and decrees passed therein shall be executed by him in like manner in all respects as the Judge might try the suits, and execute the decrees, respectively.

(2) The Judge may transfer to his own file, or to that of the Additional Judge, if an Additional Judge has been appointed, any suit or other proceeding pending on the file of the Registrar.

19. (1) When the Judge of a Court of Small Causes is absent, Admission, return, and rejection of complaints by Registrar. and an Additional Judge has not been appointed, or, having been appointed, is also absent, the Registrar may admit a complaint, or return or reject a complaint for any reason for which the Judge might return or reject it.

(2) The Judge may, of his own motion, or on the application of a party, return or reject a complaint which has been admitted by the Registrar, or admit a complaint which has been returned or rejected by him :

Provided that, where a party applies for the return or rejection or the admission of a complaint under this sub-section, and his application is not made at the first sitting of the Judge after the day on which the Registrar admitted or returned or rejected the complaint, the Judge shall dismiss the application, unless the applicant satisfies him that there was sufficient cause for not making the application at that sitting.

20. (1) If, before the date appointed for the hearing of a suit, Passing of decrees by Registrar on confession. the defendant or his agent duly authorized in that behalf appears before the Registrar, and admits the plaintiff's claim, the Registrar may, if the Judge is absent, and an Additional Judge has not been appointed, or, having been appointed, is also absent, pass against the defendant, upon the admission, a decree, which shall have the same effect as a decree passed by the Judge.

(2) Where a decree has been passed by the Registrar under sub-section (1), the Judge may grant an application for review of judgment, and re-hear the suit, on the same conditions, on the same grounds, and in the same manner, as if the decree had been passed by himself.

ly with the survivor or survivors, and, after the death of the last survivor, with the representatives of all jointly.*

Illustration.

A, in consideration of 5,000 rupees lent to him by B and C, promises B and C jointly to repay them that sum with interest on a day specified B dies. The right to claim performance rests with B's representative jointly with C during C's life, and, after the death of C, with the representatives of B and C jointly.

Time and Place for Performance.

46. Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time.

Time for performance of promise where no application is to be made, and no time is specified.

Explanation.—The question—"What is a reasonable time?"—is, in each particular case, a question of fact.

47. When a promise is to be performed on a certain day, and the promisor has undertaken to perform it without application by the promisee, the promisor may perform it at any time during the usual hours of business on such day, and at the place at which the promise ought to be performed.

Time and place for performance of promise where time is specified, and no application to be made.

Illustration.

A promises to deliver goods at B's warehouse on the 1st January. On that day A brings the goods to B's warehouse, but after the usual hour for closing it, and they are not received: A has not performed his promise.

48. When a promise is to be performed on a certain day, and the promisor has not undertaken to perform it without application by the promisee, it is the duty of the promisee to apply for performance at a proper place and within the usual hours of business.

Application for performance on certain day to be at proper time and place.

Explanation.—The question—"What is a proper time and place?"—is, in each particular case, a question of fact.

* For an exception to s. 45 in case of Government Securities, see the Indian Securities Act (XIII of 1886), s. 5.

(2) When a Court returns a plaint under sub-section (1), it shall comply with the provisions of the second paragraph of section 57* of the Code of Civil Procedure, and make such order with respect to costs as it deems just; and the Court shall, for the purposes of the Indian Limitation Act, 1877,† be deemed to have been unable to entertain the suit by reason of a cause of a nature like to that of defect of jurisdiction.

24. Where an order specified in section 588, clause 29,‡ of the Code of Civil Procedure, is made by a Court of Small Causes, an appeal therefrom shall lie to the District Court.

25. The High Court, for the purpose of satisfying itself that a decree or order made in any case decided by a Court of Small Causes was according to law, may call for the Revision of decrees and orders of Courts of Small Causes. case, and pass such order with respect thereto as it thinks fit.

26. [*Repealed by Act X. of 1888, s. 4.*]

27. Save as provided by this Act, a decree or order made under the foregoing provisions of this Act by a Court of Small Causes shall be final.

CHAPTER V.

SUPPLEMENTAL PROVISIONS.

28. (1) A Court of Small Causes shall be subject to the Subordination of Courts of Small Causes. administrative control of the District Court, and to the superintendence of the High Court, and shall—

* This section of Act XIV. of 1882 corresponds to rule 10, Order VII. of Act V. of 1908, to which the reference should now mean to apply.—See s. 158 of the latter Act.

† Should now be taken to apply to the Limitation Act, 1908 (Act IX. of 1908).

‡ See now s. 104 and rule 1, Order XLIII. of Act V. of 1908 (the new Code), to which the above reference to cl. (29) of s. 588 of Act XIV. of 1882 (the old Code) should now be taken to have been made.—See s. 158 of the first-mentioned Act.

A need not deliver the goods unless B is ready and willing to pay for the goods on delivery.

B need not pay for the goods unless A is ready and willing to deliver them on payment

(b) A and B contract that A shall deliver goods to B at a price to be paid by instalments, the first instalment to be paid on delivery

A need not deliver unless B is ready and willing to pay the first instalment on delivery.

B need not pay the first instalment unless A is ready and willing to deliver the goods on payment of the first instalment.

52. Where the order in which reciprocal promises are to be

Order of performance of performed is expressly fixed by the reciprocal promises.

contract, they shall be performed in that order; and, where the order is not expressly fixed by the contract, they shall be performed in that order which the nature of the transaction requires.

Illustrations

(a) A and B contract that A shall build a house for B at a fixed price A's promise to build the house must be performed before B's promise to pay for it

(b) A and B contract that A shall make over his stock-in-trade to B at a fixed price, and B promises to give security for the payment of the money A's promise need not be performed until the security is given, for the nature of the transaction requires that A should have security before he delivers up his stock.

53. When a contract contains reciprocal promises, and one

Liability of party preventing event on which contract is to take effect.

party to the contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented; and he is entitled to compensation* from the other party for any loss which he may sustain in consequence of the non-performance of the contract

Illustration.

A and B contract that B shall execute certain work for A for a thousand rupees B is ready and willing to execute the work accordingly, but A prevents him from doing so The contract is voidable at the option of B, and if he elects to rescind it, he is entitled to recover from A compensation for any loss which he has incurred by its non-performance

* See s 73, *infra*

(c) the practice and procedure of Courts of Small Causes,

(d) appeal from certain orders of those Courts and revision of cases decided by them, and

(e) the finality of their decrees and orders subject to such appeal and revision as are provided by this Act,

applies to Courts invested, by or under any enactment for the time being in force, with the jurisdiction of a Court of Small Causes, so far as regards the exercise of that jurisdiction by those Courts.

(2) Nothing in sub-section (1), with respect to Courts invested with the jurisdiction of a Court of Small Causes, applies to suits instituted, or proceedings commenced, in those Courts before the date on which they were invested with that jurisdiction.

33. A Court invested with the jurisdiction of a Court of Small Causes with respect to the exercise of that jurisdiction, and the same Court with respect to the exercise of its jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, shall, for the purposes of this Act and the Code of Civil Procedure,* be deemed to be different Courts.

Modification of Code as so applied.

34. Notwithstanding anything in the last two foregoing sections,—

(a) when, in exercise of the jurisdiction of a Court of Small Causes, a Court invested with that jurisdiction sends a decree for execution to itself as a Court having jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, or

(b) when a Court, in the exercise of its jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, sends a decree for execution to itself as a Court invested with the jurisdiction of a Court of Small Causes,

the documents mentioned in section 224† of the Code of Civil Procedure shall not be sent with the decree unless, in any case, the Court, by order in writing, requires them to be sent.

* Act V. of 1908.

† Should now be taken as referring to rule 6, Order XXI. of Act V. of 1908 (the Code now in force).—See s. 158 of that Act.

If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed unless, at the time of such acceptance, he gives notice to the promisor of his intention to do so.*

Agreement to do impossible act.

56. An agreement to do an act impossible in itself is void.

A contract to do an act which, after the contract is made, becomes impossible,† or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful‡

Where one person has promised to do something which he knew or, with reasonable diligence, might have known, and which the promisee did not know, to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise.

Illustrations.

(a) A agrees with B to discover treasure by magic. The agreement is void.

(b) A and B contract to marry each other. Before the time fixed for the marriage, A goes mad. The contract becomes void.

(c) A contracts to marry B, being already married to C, and being forbidden by the law to which he is subject to practise polygamy. A must make compensation to B for the loss caused to her by the non-performance of his promise.

(d) A contracts to take in cargo for B at a foreign port. A's Government afterwards declares war against the country in which the port is situated. The contract becomes void when war is declared.

(e) A contracts to act at a theatre for six months in consideration of a sum paid in advance by B. On several occasions A is too ill to act. The contract to act on those occasions becomes void.

* Compare ss 62 and 63, *infra*

† Otherwise than by the default of the contractor

‡ But see s. 65, *infra*. And see the Specific Relief Act (I. of 1877),

- (3) a suit concerning an act or order purporting to be done or made by any other officer of the Government in his official capacity, or by a Court of Wards, or by an officer of a Court of Wards, in the execution of his office;
- (4) a suit for the possession of immoveable property, or for the recovery of an interest in such property;
- (5) a suit for the partition of immoveable property;
- (6) a suit by a mortgagee of immoveable property for the foreclosure of the mortgage, or for the sale of the property, or by a mortgagor of immoveable property for the redemption of the mortgage;
- (7) a suit for the assessment, enhancement, abatement, or apportionment of the rent of immoveable property;
- (8) a suit for the recovery of rent other than house-rent, unless the Judge of the Court of Small Causes has been expressly invested by the Local Government with authority to exercise jurisdiction with respect thereto;
- (9) a suit concerning the liability of land to be assessed to land revenue;
- (10) a suit to restrain waste;
- (11) a suit for the determination or enforcement of any other right to, or interest in, immoveable property;
- (12) a suit for the possession of an hereditary office, or of an interest in such an office, including a suit to establish an exclusive or periodically recurring right to discharge the functions of an office;
- (13) a suit to enforce payment of the allowance or fees respectively called *malikana* and *hakk*, or of cesses or other dues when the cesses or dues are payable to a person by reason of his interest in immoveable property, or in an hereditary office, or in a shrine or other religious institution;
- (14) a suit to recover, from a person to whom compensation has been paid under the Land Acquisition Act, 1894,* the whole or any part of the compensation;
- (15) a suit for the specific performance or rescission of a contract;
- (16) a suit for the rectification or cancellation of an instrument;
- (17) a suit to obtain an injunction;
- (18) a suit relating to a trust, including a suit to make good, out of the general estate of a deceased trustee, the loss occasioned by a breach of trust, and a suit by a co-trustee to enforce, against the estate of a deceased trustee, a claim for contribution;
- (19) a suit for a declaratory decree, not being a suit instituted under section 283 or section 332† of the Code of Civil Procedure;

* The reference to Act X. of 1870 has been altered in accordance with Act I. of 1894, s. 2 (3).
 † For "section 283 or section 332" read "rule 63 or rules 100, 101 or 103 of Order XXI."—See s. 158 of Act V. of 1908 (the new Code).

60. Where the debtor has omitted to intimate, and there are no other circumstances indicating, to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits.

61. Where neither party makes any appropriation, the payment shall be applied in discharge of the debts* in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payment shall be applied in discharge of each proportionably.

Contracts which need not be performed.

Effect of novation, rescission, and alteration of contract.

62 If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.

Illustrations.

(a) A owes money to B under a contract. It is agreed, between A, B, and C, that B shall thenceforth accept C as his debtor instead of A. The old debt of A to B is at an end, and a new debt from C to B has been contracted.

(b.) A owes B 10,000 rupees. A enters into an arrangement with B, and gives B a mortgage of his (A's) estate for 5,000 rupees in place of the debt of 10,000 rupees. This is a new contract, and extinguishes the old.

(c) A owes B 1,000 rupees under a contract. B owes C 1,000 rupees. B orders A to credit C with 1,000 rupees in his books, but C does not assent to the arrangement. B still owes C 1,000 rupees, and no new contract has been entered into.

63. Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance,† or may accept, instead of it, any satisfaction which he thinks fit.

* Probably the lawful debts referred to in s 60.

† But see s 135, *infra*.

- (34) a suit on a policy of insurance, or for the recovery of any premium paid under any such policy ;
- (35) a suit for compensation—
- (a) for loss occasioned by the death of a person caused by actionable wrong,
 - (b) for wrongful arrest, restraint, or confinement ;
 - (c) for malicious prosecution ;
 - (d) for libel ;
 - (e) for slander ;
 - (f) for adultery or seduction ;
 - (g) for breach of contract of betrothal or promise of marriage ;
 - (h) for inducing a person to break a contract made with the plaintiff ;
 - (i) for obstruction of an easement or diversion of a watercourse ;
 - (j) for illegal, improper, or excessive distress or attachment ;
 - (k) for improper arrest under Chapter XXXIV.* of the Code of Civil Procedure, or in respect of the issue of an injunction wrongfully obtained under Chapter XXXV.* of that Code ; or
 - (l) for injury to the person in any case not specified in the foregoing sub-clauses of this clause ;
- (36) a suit by a Mahomedan for exigible (*muajjal*) or deferred (*muwajjal*) dower,
- (37) a suit for the restitution of conjugal rights, for the recovery of a wife, for the custody of a minor, or for a divorce ;
- (38) a suit relating to maintenance ;
- (39) a suit for arrears of land-revenue, village-expenses, or other sums payable to the representative of a village community, or to his heir or other successor in title ;
- (40) a suit for profits payable by the representative of a village-community, or by his heir or other successor in title, after payment of land-revenue, village-expenses, and other sums ;
- (41) a suit for contribution by a sharer in joint property in respect of a payment made by him of money due from a co-sharer or by a manager of joint property, or a member of an undivided family, in respect of a payment made by him on account of the property or family ;

* Chapter XXXIV. & XXXV. of Act XIV. of 1882 correspond to Order XXXVIII. (excluding rule 7 and including s 95) and Order XXXIX. (including s. 95), respectively, of Act V. of 1908 (the new Code), to which the reference to the Chapters aforesaid now be taken to apply.—See s 158 of the latter Act.

(c) A, a singer, contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her a hundred rupees for each night's performance. On the sixth night, A wilfully absents herself from the theatre, and B, in consequence, rescinds the contract: B must pay A for the five nights on which she had sung.

(d.) A contracts to sing for B at a concert for 1,000 rupees which are paid in advance. A is too ill to sing: A is not bound to make compensation to B for the loss of the profits which B would have made if A had been able to sing, but must refund to B the 1,000 rupees paid in advance.

66. The rescission of a voidable contract may be communicated or revoked in the same manner, and subject to the same rules, as apply to the communication or revocation of a proposal.*

Mode of communicating or revoking rescission of voidable contract.

67. If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby.

Effect of neglect of promisee to afford promisor reasonable facilities for performance.

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A contracts with B to repair B's house.

B neglects or refuses to point out to A the places in which his house requires repair:

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* See ss 3 and 5, *supra*.

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ACT NO. XVI. OF 1908.

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Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

When an obligation resembling those created by contract has been incurred, and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default as if such person had contracted to discharge it, and had broken his contract.

Explanation—In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

Illustrations

(a) A contracts to sell and deliver 50 maunds of saltpetre to B, at a certain price, to be paid on delivery. A breaks his promise. B is entitled to receive from A, by way of compensation, the sum, if any, by which the contract-price falls short of the price for which B might have obtained 50 maunds of saltpetre of like quality at the time when the saltpetre ought to have been delivered.

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(*g*) A, having contracted with B to supply B with 1,000 tons of iron at 100 rupees a ton, to be delivered at a stated time, contracts with C for the purchase of 1,000 tons of iron at 80 rupees a ton, telling C that he does so for the purpose of performing his contract with B. C fails to perform his contract with A, who cannot procure other iron, and B, in consequence, rescinds the contract. C must pay to A 20,000 rupees, being the profit which A would have made by the performance of his contract with B.

(*h*) A contracts with B to make and deliver to B, by a fixed day, for a specified price, a certain piece of machinery. A does not deliver the piece of machinery at the time specified, and, in consequence of this, B is obliged to procure another at a higher price than that which he was to have paid to A, and is prevented from performing a contract which B had made with a third person at the time of his contract with A (but which had not been then communicated to A), and is compelled to make compensation for breach of that contract. A must pay to B, by way of compensation, the difference between the contract-price of the piece of machinery and the sum paid by B for another, but not the sum paid by B to the third person by way of compensation.

(*i*) A, a builder, contracts to erect and finish a house by the first of January in order that B may give possession of it at that time to C, to whom B has contracted to let it. A is informed of the contract between B and C. A builds the house so badly that, before the first of January, it falls down, and has to be rebuilt by B, who, in consequence, loses the rent which he was to have received from C, and is obliged to make compensation to C for the breach of his contract. A must make compensation to B for the cost of rebuilding the house, for the rent lost, and for the compensation made to C.

(*m*) A sells certain merchandise to B, warranting it to be of a particular quality, and B, in reliance upon this warranty, sells it to C with a similar warranty. The goods prove to be not according to the warranty, and B becomes liable to pay C a sum of money by way of compensation. B is entitled to be reimbursed this sum by A.

(*n*) A contracts to pay a sum of money to B on a day specified. A does not pay the money on that day. B, in consequence of not receiving the money on that day, is unable to pay his debts, and is totally ruined. A is not liable to make good to B anything except the principal sum he contracted to pay, together with interest up to the day of payment.

(*o*) A contracts to deliver 50 maunds of saltpetre to B on the first of January at a certain price. B afterwards, before the first of January, contracts to sell the saltpetre to C at a price higher than the market-price of the first of January. A breaks his promise. In estimating the compensation payable by A to B, the market-price of the first of January, and not the profit which would have arisen to B from the sale to C, is to be taken into account.

(*p*) A contracts to sell and deliver 500 bales of cotton to B on a fixed day. A knows nothing of B's mode of conducting his business. A break

THE INDIAN REGISTRATION ACT, 1908:

ACT NO. XVI. OF 1908.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

Received His Excellency's Assent on the 18th December 1908.

An Act to consolidate the Enactments relating to the Registration of Documents.

WHEREAS it is expedient to consolidate the enactments relating to the registration of documents; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

Short title, extent, and commencement.

1. (1) This Act may be called the Indian Registration Act, 1908.

(2) It extends to the whole of British India except such districts or tracts of country as the Local Government may, with the previous sanction of the Governor-General in Council, exclude from its operation.

(3) It shall come into force on the first day of January 1909.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) "addition" means the place of residence, and the profession, trade, rank, and title (if any) of a person described, and, in the case of a Native of India, his caste (if any) and his father's name, or, where he is usually described as the son of his mother, then his mother's name:

(2) "book" includes a portion of a book and also any number of sheets connected together with a view of forming a book or portion of a book:

(3) "district" and "sub-district," respectively, mean a district and sub-district formed under this Act:

(4) "District Court" includes the High Court in its ordinary original civil jurisdiction:

he shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein.

Explanation.—A person who enters into a contract with Government does not necessarily thereby undertake any public duty or promise to do an act in which the public are interested.

Illustrations.

(a) A contracts with B to pay B Rs. 1,000 if he fails to pay B Rs. 500 on a given day. A fails to pay B Rs. 500 on that day. B is entitled to recover from A such compensation, not exceeding Rs. 1,000, as the Court considers reasonable.

(b) A contracts with B that, if A practises as a surgeon within Calcutta, he will pay B Rs. 5,000. A practises as a surgeon in Calcutta. B is entitled to such compensation, not exceeding Rs. 5,000, as the Court considers reasonable.

(c) A gives a recognisance binding him in a penalty of Rs. 500 to appear in Court on a certain day. He forfeits his recognisance. He is liable to pay the whole penalty.

(d)* A gives B a bond for the repayment of Rs. 1,000 with interest at 12 per cent at the end of six months, with a stipulation that, in case of default, interest shall be payable at the rate of 75 per cent from the date of default. This is a stipulation by way of penalty, and B is only entitled to recover from A such compensation as the Court considers reasonable.

(e)* A who owes money to B, a money-lender, undertakes to repay him by delivering to him 10 maunds of grain on a certain date, and stipulates that, in the event of his not delivering the stipulated amount by the stipulated date, he shall be liable to deliver 20 maunds. This is a stipulation by way of penalty, and B is only entitled to reasonable compensation in case of breach.

(f)* A undertakes to repay B a loan of Rs. 1,000 by five equal monthly instalments, with a stipulation that, in default of payment of any instalment, the whole shall become due. This stipulation is not by way of penalty, and the contract may be enforced according to its terms.

(g)* A borrows Rs. 100 from B, and gives him a bond for Rs. 200 payable by five yearly instalments of Rs. 40, with a stipulation that, in default of payment of any instalment, the whole shall become due. This is a stipulation by way of penalty.

75. A person who rightfully rescinds a contract is entitled to compensation for any damage which he has sustained through the non-fulfilment of the contract.

Party rightfully rescinding contract entitled to compensation.

* *Illustrations (d), (e), (f), and (g) have been added to the original ones to s. 74 by the Indian Contract Act Amendment Act (VI. of 1899), s. 4 (a).*

(2) The Branch Inspector-General of Sindh may hold simultaneously any other office under Government.

5. (1) For the purposes of this Act, the Local Government shall form districts and sub-districts, and shall prescribe and may alter the limits of such districts and sub-districts.

(2) The districts and sub-districts formed under this section, together with the limits thereof, and every alteration of such limits, shall be notified in the local official gazette.

(3) Every such alteration shall take effect on such day after the date of the notification as is herein mentioned.

6. The Local Government may appoint such persons, whether Registrars and Sub-Registrars, public officers or not, as it thinks proper, to be Registrars of the several districts, and to be Sub-Registrars of the several sub-districts, formed as aforesaid, respectively.

7. (1) The Local Government shall establish in every district an office of Registrar and an office to be styled the office of the Sub-Registrar. Registrar, and in every sub-district an office or offices to be styled the office of the Sub-Registrar or the offices of the Joint Sub-Registrars.

(2) The Local Government may amalgamate with any office of a Registrar any office of a Sub-Registrar subordinate to such Registrar, and may authorize any Sub-Registrar whose office has been so amalgamated to exercise and perform, in addition to his own powers and duties, all or any of the powers and duties of the Registrar to whom he is subordinate:

Provided that no such authorization shall enable a Sub-Registrar to hear an appeal against an order passed by himself under this Act.

8. (1) The Local Government may also appoint officers, to be called Inspectors of Registration-offices, and may prescribe the duties of such officers.

(2) Every such Inspector shall be subordinate to the Inspector-General.

(b) A sends goods to B with the request that he will buy them at a stated price if he approves of them, or return them if he does not approve of them. B retains the goods, and informs A that he approves of them. The goods become B's when B retains them.

(c) B offers A, for his horse, 1,000 rupees, the horse to be delivered to B on a stated day, and the price to be paid on another stated day. A accepts the offer. The horse becomes B's as soon as the proposal is accepted.

(d) B offers A, for his horse, 1,000 rupees on a month's credit. A accepts the offer. The horse becomes B's as soon as the offer is accepted.

(e) B, on the first January, offers to A, for a quantity of rice, 2,000 rupees, to be paid on the first March following, the rice not to be taken away till paid for. A accepts the offer. The rice becomes B's as soon as the offer is accepted.

79. Where there is a contract for the sale of a thing which has yet to be ascertained, made, or finished,* the ownership of the thing is not transferred to the buyer until it is ascertained, made, or finished.

Illustration

B orders A, a barge-builder, to make him a barge. The price is not made payable by instalments. While the barge is building, B pays to A money from time to time on account of the price. The ownership of the barge does not pass to B until it is finished.

80. Where, by a contract for the sale of goods, the seller is to do anything to them for the purpose of putting them into a state in which the buyer is to take them, the sale is not complete until such thing has been done.

Illustration.

A, a ship-builder, contracts to sell to B for a stated price a vessel which is lying in A's yard, the vessel to be rigged and fitted for a voyage, and the price to be paid on delivery. Under the contract, the property in the vessel does not pass to B until the vessel has been rigged, fitted up, and delivered.

81. Where anything remains to be done to the goods by the seller for the purpose of ascertaining the amount of the price, the sale is not complete until this has been done.

Completion of sale of goods when seller has to do anything thereto in order to ascertain price.

* See s. 80, *infra*.

14. (1) Subject to the approval of the Governor-General in Council, the Local Government may assign such salaries as such Government deems proper to the registering officers appointed under this Act, or provide for their remuneration by fees, or partly by fees and partly by salaries.

(2) The Local Government may allow proper establishments for the several offices under this Act.

15. The several Registrars and Sub-Registrars shall use a seal bearing the following inscription in English and in such other language as the Local Government directs: "The seal of the Registrar (or Sub-Registrar) of ."

16. (1) The Local Government shall provide for the office of every registering officer the books necessary for the purposes of this Act.

(2) The books so provided shall contain the forms from time to time prescribed by the Inspector-General, with the sanction of the Local Government, and the pages of such books shall be consecutively numbered in print, and the number of pages in each book shall be certified on the title-page by the officer by whom such books are issued.

(3) The Local Government shall supply the office of every Registrar with a fire-proof box, and shall, in each district, make suitable provision for the safe custody of the records connected with the registration of documents in such district.

PART III.

OF REGISTRABLE DOCUMENTS.

17. (1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI. of 1864 or the Indian Registration Act, 1866,* or the Indian Registration Act, 1871,† or the Indian Registration Act, 1877,‡ or this Act came or comes into force, namely,—

* Act XX. of 1866.

† Act VII. of 1871.

‡ Act III. of 1877.

goods answering to the contract, and, by his doing so, the goods are ascertained.

Illustration.

B agrees with A to purchase of him at a stated price, to be paid on a fixed day, 50 maunds of rice out of a larger quantity in A's granary. It is agreed that B shall send sacks for the rice, and that A shall put the rice into them. B does so, and A puts 50 maunds of rice into the sacks: The goods have been ascertained.

85. Where an agreement is made for the sale of immoveable and moveable property combined, the ownership of the moveable property does not pass before the transfer of the immoveable property.

Transfer of ownership of moveable property when sold together with immoveable.

Illustration.

A agrees with B for the sale of a house and furniture: The ownership of the furniture does not pass to B until the house is conveyed to B.

Buyer to bear loss after goods have become his property.

86. When goods have become the property of the buyer, he must bear any loss arising from their destruction or injury.

Illustrations.

(a.) B offers and A accepts 100 rupees for a stack of fire-wood standing on A's premises, the firewood to be allowed to remain on A's premises till a certain day, and not to be taken away till paid for. Before payment, and while the firewood is on A's premises, it is accidentally destroyed by fire. B must bear the loss.

(b.) A bids 1,000 rupees for a picture at a sale by auction. After the bid, it is injured by an accident. If the accident happens before the hammer falls, the loss falls on the seller; if afterwards, on A.

87. When there is a contract for the sale of goods not yet in existence, the ownership of the goods may be transferred by acts done, after the goods are produced in pursuance of the contract by the seller, or by the buyer with the seller's assent.

Transfer of ownership of goods agreed to be sold while non-existent.

Illustrations.

(a.) A contracts to sell to B, for a stated price, all the indigo which shall be produced at A's factory during the ensuing year. A, when the indigo has been manufactured, gives B an acknowledgment that he

in immoveable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit, or extinguish any such right, title, or interest; or

(vi) any decree or order of a Court and any award; or

(vii) any grant of immoveable property by Government; or

(viii) any instrument of partition made by a Revenue-officer; or

(ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871,* or the Land Improvement Loans Act, 1883;† or

(x) any order granting a loan under the Agriculturists' Loans Act, 1884,‡ or instrument for securing the repayment of a loan made under that Act; or

(xi) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or

(xii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue Officer.

(3) Authorities to adopt a son, executed after the first day of January 1872, and not conferred by a will, shall also be registered.

Documents of which registration is optional.

18. Any of the following documents may be registered under this Act, namely,—

(a) instruments (other than instruments of gift and wills) which purport or operate to create, declare, assign, limit, or extinguish, whether in present or in future, any right, title, or interest, whether vested or contingent, of a value less than one hundred rupees, to or in immoveable property;

* Act XXVI of 1871.

† Act XIX. of 1883.

‡ Act XII. of 1884.

Illustrations.

(a.) A sells to B a horse, and causes or permits it to be removed from A's stable to B's. The removal to B's stable is a delivery.

(b) B in England orders 100 bales of cotton from A, a merchant of Bombay, and sends his own ship to Bombay for the cotton: The putting the cotton on board the ship is a delivery to B.

(c) A sells to B certain specific goods which are locked up in a godown. A gives B the key of the godown in order that he may get the goods. This is a delivery.

(d.) A sells to B five specific casks of oil. The oil is in the warehouse of A. B sells the five casks to C. A receives warehouse-rent for them from C. This amounts to a delivery of the oil to C, as it shows an assent on the part of A to hold the goods as warehouseman of C.

(e) A sells to B 50 maunds of rice in the possession of C, a warehouseman. A gives B an order to C to transfer the rice to B, and C assents to such order, and transfers the rice in his books to B. This is a delivery.

(f) A agrees to sell B five tons of oil, at 1,000 rupees per ton, to be paid for at the time of delivery. A gives to C, a wharfinger, at whose wharf he had twenty tons of the oil, an order to transfer five of them into the name of B. C makes the transfer in his books, and gives A's clerk a notice of the transfer for B. A's clerk takes the transfer notice to B, and offers to give it to him on payment of the price of the oil. B refuses to pay. There has been no delivery to B, as B never assented to make C his agent to hold for him the five tons selected by A.

91. A delivery to a wharfinger or carrier of the goods sold has

Effect of delivery to wharfinger or carrier. the same effect as a delivery to the buyer, but does not render the buyer liable for the price of goods which do not reach him unless the delivery is so made as to enable him to hold the wharfinger or carrier responsible for the safe custody or delivery of the goods.

Illustration.

B, at Agra, orders of A, who lives at Calcutta, three casks of oil to be sent to him by railway. A takes three casks of oil directed to B to the railway station, and leaves them there without conforming to the rules which must be complied with in order to render the Railway Company responsible for their safety. The goods do not reach B. There has not been a sufficient delivery to charge B in a suit for the price.

92 A delivery of part of goods, in progress of the delivery

Effect of part-delivery. of the whole, has the same effect for the purpose of passing the property in such goods as a delivery of the whole; but a delivery of part of the goods, with an intention of severing it from the whole, does not operate as a delivery of the remainder.

situate, and by their superficial contents, the roads and other properties on which they abut, and their existing occupancies, and also, whenever it is practicable, by reference to a Government map or survey.

(4) No non-testamentary document containing a map or plan of any property comprised therein shall be accepted for registration unless it is accompanied by a true copy of the map or plan, or, in case such property is situate in several districts, by such number of true copies of the map or plan as are equal to the number of such districts.

22 (1) Where it is, in the opinion of the Local Government, practicable to describe houses not being houses in towns, and lands by reference to a Government map or survey, the Local Government may, by rule made under this Act, require that such houses and lands as aforesaid shall, for the purposes of section 21, be so described.

(2) Save as otherwise provided by any rule made under subsection (1), failure to comply with the provisions of section 21, sub-section (2) or sub-section (3), shall not disentitle a document to be registered if the description of the property to which it relates is sufficient to identify that property.

PART IV.

OF THE TIME OF PRESENTATION.

23. Subject to the provisions contained in sections 24, 25, and 26, no document other than a will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution :

Provided that a copy of a decree or order may be presented within four months from the day on which the decree or order was made, or, where it is appealable, within four months from the day on which it becomes final.

24. Where there are several persons executing a document at different times, such document may be presented for registration and re-registration within four months from the date of each execution.

Explanation.—A person is insolvent who has ceased to pay his debts in the usual course of business, or who is incapable of paying them.
 ‘Insolvency’ defined.

Illustration.

A sells to B a quantity of sugar in A's warehouse. It is agreed that three months' credit shall be given. B allows the sugar to remain in A's warehouse. Before the expiry of the three months, B becomes insolvent: A may retain the goods for the price.

97. Where, by the contract the payment is to be made at a future day, and the buyer allows the goods to remain in the possession of the seller until that day, and does not then pay for them, the seller may retain the goods for the price.
 Seller's lien where payment to be made at future day, and buyer allows goods to remain in seller's possession.

Illustration.

A sells to B a quantity of sugar in A's warehouse. It is agreed that three months' credit shall be given. B allows the sugar to remain in A's warehouse till the expiry of the three months, and then does not pay for them. A may retain the goods for the price.

98. A seller, in possession of goods sold, may retain them for the price against any subsequent buyer unless the seller has recognized the title of the subsequent buyer.
 Seller's lien against subsequent buyer.

Stoppage in Transit.

99. A seller who has parted with the possession of the goods, and has not received the whole price, may, if the buyer becomes insolvent, stop the goods while they are in transit to the buyer.
 Power of seller to stop in transit.

100. Goods are to be deemed in transit while they are in the possession of the carrier, or lodged at any place in the course of transmission to the buyer and are not yet come into the possession of the buyer or any person on his behalf, otherwise than as being in possession of the carrier, or as being so lodged.
 When goods are to be deemed in transit.

Illustrations.

(a) B, living at Madras, orders goods of A at Patna, and directs that they shall be sent to Madras. The goods are sent to Calcutta, and there-

either in the office of the Sub-Registrar in whose sub-district the document was executed, or in the office of any other Sub-Registrar under the Local Government at which all the persons executing and claiming under the document desire the same to be registered.

(2) A copy of a decree or order may be presented for registration in the office of the Sub-Registrar in whose sub-district the original decree or order was made, or, where the decree or order does not affect immoveable property, in the office of any other Sub-Registrar under the Local Government at which all the persons claiming under the decree or order desire the copy to be registered.

30. (1) Any Registrar may in his discretion receive and register any document which might be registered by any Sub-Registrar subordinate to him.

Registration by Registrars in certain cases.

(2) The Registrar of a district including a Presidency-town and the Registrar of the Lahore District may receive and register any document referred to in section 28 without regard to the situation in any part of British India of the property to which the document relates.

31. In ordinary cases the registration or deposit of documents under this Act shall be made only at the office of the officer authorized to accept the same for registration or deposit:

Registration or acceptance for deposit at private residence.

Provided that such officer may, on special cause being shown, attend at the residence of any person desiring to present a document for registration or to deposit a will, and accept for registration or deposit such document or will.

PART VI.

OF PRESENTING DOCUMENTS FOR REGISTRATION.

32. Except in the cases mentioned in section 31 and section 89, every document to be registered under this Act, whether such registration be compulsory or optional, shall be presented at the proper registration-office,—

Persons to present documents for registration.

(a) by some person executing or claiming under the same, or, in the case of a copy of a decree or order, claiming under the decree or order, or

103. Where a bill of lading or other instrument of title to any goods is assigned by the buyer of such goods by way of pledge to secure an advance made specifically upon it in good faith, the seller cannot, except on payment or tender to the pledgee of the advance so made, stop the goods in transit.

Illustrations.

(a) A sells and consigns goods to B of the value of 12,000 rupees. B assigns the bill of lading for these goods to C to secure a specific advance of 5,000 rupees made to him upon the bill of lading by C. B becomes insolvent, being indebted to C to the amount of 9,000 rupees. A is not entitled to stop the goods except on payment or tender to C of 5,000 rupees.

(b) A sells and consigns goods to B of the value of 12,000 rupees. B assigns the bill of lading for these goods to C to secure the sum of 5,000 rupees due from him to C upon a general balance of account. B becomes insolvent: A is entitled to stop the goods in transit without payment or tender to C of the 5,000 rupees.

104. The seller may effect stoppage in transit, either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other depository in whose possession they are.

105. Such notice may be given, either to the person who has the immediate possession of the goods, or to the principal whose servant has possession. In the latter case, the notice must be given at such a time, and under such circumstances, that the principal, by the exercise of reasonable diligence, may communicate it to his servant in time to prevent a delivery to the buyer.

106. Stoppage in transit entitles the seller to hold the goods stopped until the price of the whole of the goods sold is paid.

Illustration.

A sells to B 100 bales of cotton, 60 bales having come into B's possession, and 40 being still in transit. B becomes insolvent, and A, being still unpaid, stops the 40 bales in transit. A is entitled to hold the 40 bales until the price of the 100 bales is paid.

Re-sale.

107. Where the buyer of goods fails to perform his part of the contract, either by not taking the goods sold to him, or by not paying for to perform.

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himself go to the house of the person purporting to be the principal, or to the jail in which he is confined, and examine him, or issue a commission for his examination.

(4) Any power-of-attorney mentioned in this section may be proved by the production of it without further proof when it purports on the face of it to have been executed before, and authenticated by, the person or Court hereinbefore mentioned in that behalf.

34. (1) Subject to the provisions contained in this Part, and Enquiry before registration in sections 41, 43, 45, 69, 75, 77, 88, and by registering officer. 89, no document shall be registered under this Act unless the persons executing such document or their representatives, assigns, or agents authorized as aforesaid, appear before the registering officer within the time allowed for presentation under sections 23, 24, 25, and 26:

Provided that, if, owing to urgent necessity or unavoidable accident, all such persons do not so appear, the Registrar, in cases where the delay in appearing does not exceed four months, may direct that, on payment of a fine not exceeding ten times the amount of the proper registration-fee, in addition to the fine, if any, payable under section 25, the document may be registered.

(2) Appearances under sub-section (1) may be simultaneous or at different times.

(3) The registering officer shall thereupon—

(a) enquire whether or not such document was executed by the persons by whom it purports to have been executed;

(b) satisfy himself as to the identity of the persons appearing before him, and alleging that they have executed the document; and,

(c) in the case of any person appearing as a representative, assign, or agent, satisfy himself of the right of such person so to appear.

(4) Any application for a direction under the proviso to sub-section (1) may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

(5) Nothing in this section applies to copies of decrees or orders.

Illustrations.

(a.) A buys from B, in good faith, a cow which B had stolen from C: The property in the cow is not transferred to A.

(b.) A, a merchant, entrusts B, his agent, with a bill of lading relating to certain goods, and instructs B not to sell the goods for less than a certain price, and not to give credit to D. B sells the goods to D for less than that price, and gives D three months' credit: The property in the goods passes to D.

(c.) A sells to B goods of which he has the bill of lading, but the bill of lading is made out for delivery of the goods to C, and it has not been endorsed by C. The property is not transferred to B.

(d.) A, B, and C are joint Hindu brothers, who own certain cattle in common. A is left by B and C in possession of a cow, which he sells to D. D purchases *bona-fide*: The property in the cow is transferred to D.

(e.) A, by a misrepresentation not amounting to cheating, induces B to sell and deliver to him a horse. A sells the horse to C before B has rescinded the contract: The property in the horse is transferred to C, and B is entitled to compensation from A for any loss which B has sustained by being prevented from rescinding the contract.

(f.) A compels B by wrongful intimidation, or induces him by cheating or forgery, to sell him a horse, and, before B rescinds the contract, sells the horse to C. The property is not transferred to C.

Warranty.

109. If the buyer or any person claiming under him is, by Seller's responsibility for reason of the invalidity of the seller's badness of title. title, deprived of the thing sold, the seller is responsible to the buyer or the person claiming under him for loss caused thereby unless a contrary intention appears by the contract.

Establishment of implied warranty of goodness or quality.

110. An implied warranty of goodness or quality may be established by the custom of any particular trade.

Warranty of soundness implied on sale of provisions.

111. On the sale of provisions, there is an implied warranty that they are sound.

Warranty of bulk implied on sale of goods by sample.

112. On the sale of goods by sample, there is an implied warranty that the bulk is equal in quality to the sample*.

* See s. 118, *infra*

such officer or Court as the Local Government directs in this behalf to issue a summons requiring him to appear at the registration-office, either in person or by duly-authorized agent, as in the summons may be mentioned, and at a time named therein.

37. The officer or Court, upon receipt of the peon's fee payable in such cases, shall issue the summons accordingly, and cause it to be served upon the person whose appearance is so required.

Persons exempt from appearance at registration-office.

38. (1) (a) A person who, by reason of bodily infirmity, is unable, without risk or serious inconvenience, to appear at the registration-office, or

(b) a person in jail under civil or criminal process, or
(c) persons exempt by law from personal appearance in Court, and who would, but for the provision next hereinafter contained, be required to appear in person at the registration-office, shall not be required so to appear.

(2) In the case of every such person, the registering officer shall either himself go to the house of such person, or to the jail in which he is confined, and examine him or issue a commission for his examination.

39. The law in force for the time being as to summonses, Law as to summonses, commissions, and witnesses. commissions, and compelling the attendance of witnesses, and for their remuneration in suits before Civil Courts, shall, save as aforesaid, and *mutatis mutandis*, apply to any summons or commission issued, and any person summoned to appear, under the provisions of this Act.

PART VIII.

OF PRESENTING WILLS AND AUTHORITIES TO ADOPT.

40 (1) The testator or, after his death, any person claiming as executor or otherwise under a will may present it to any Registrar or Sub-Registrar for registration.

(2) The donor or, after his death, the donee of any authority to adopt, or the adoptive son, may present it to any Registrar or Sub-Registrar for registration.

116. In the absence of fraud and of any express warranty of quality, the seller of an article which answers the description under which it was sold is not responsible for a latent defect in it.

Illustration.

A sells to B a horse. It turns out that the horse had, at the time of the sale, a defect of which A was unaware: A is not responsible for this.

117. Where a specific article, sold with a warranty, has been delivered and accepted, and the warranty is broken, the sale is not thereby rendered voidable, but the buyer is entitled to compensation from the seller for loss caused by the breach of warranty.

Illustration.

A sells and delivers to B a horse warranted sound. The horse proves to have been unsound at the time of sale: The sale is not thereby rendered voidable, but B is entitled to compensation from A for loss caused by the unsoundness.

118. Where there has been a contract with a warranty for the sale of goods which, at the time of the contract, were not ascertained or not in existence, and the warranty is broken, the buyer may accept the goods or refuse to accept the goods when tendered,

or keep the goods for a time reasonably sufficient for examining and trying them, and then refuse to accept them: Provided that, during such time, he exercises no other act of ownership over them than is necessary for the purpose of examination and trial.

In any case the buyer is entitled to compensation from the seller for any loss caused by the breach of warranty; but, if he accepts the goods, and intends to claim compensation, he must give notice of his intention to do so within a reasonable time after discovering the breach of the warranty.

Illustrations.

(a) A agrees to sell and, without application on B's part, deliver to B 200 bales of unascertained cotton by sample. Cotton not in accordance with sample is delivered to B. B may return it if he has not kept it longer than a reasonable time for the purpose of examination.

(b) B agrees to buy of A twenty-five sacks of flour by sample. The flour is delivered to B, who pays the price. B, upon examination, finds it

45. (1) If, on the death of a testator who has deposited a sealed cover under section 42, application be made to the Registrar who holds it in deposit to open the same, and if the Registrar is satisfied that the testator is dead, he shall, in the applicant's presence, open the cover, and, at the applicant's expense, cause the contents thereof to be copied into his Book No. 3.

(2) When such copy has been made, the Registrar shall re-deposit the original will.

46. (1) Nothing hereinbefore contained shall affect the provisions of section 259 of the Indian Succession Act, 1865,* or of section 81 of the Probate and Administration Act, 1881,† or the power of any Court by order to compel the production of any will.

(2) When any such order is made, the Registrar shall, unless the will has been already copied under section 45, open the cover, and cause the will to be copied into his Book No. 3, and make a note on such copy that the original has been removed into Court in pursuance of the order aforesaid.

PART X.

OF THE EFFECTS OF REGISTRATION AND NON-REGISTRATION.

47. A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration.

48. All non-testamentary documents duly registered under this Act, and relating to any property, whether moveable or immovable, shall take effect against any oral agreement or declaration relating to such property, unless where the agreement or declaration has been accompanied or followed by delivery of possession.

Effect of non-registration of documents required to be registered.

49. No document required by section 17 to be registered shall—

* Act X. of 1865.

† Act V. of 1881.

CHAPTER VIII.

OF INDEMNITY AND GUARANTEE.

124. A contract by which one party promises to save the 'Contract of indemnity' other from loss caused to him by the defined. conduct of the promisor himself, or by the conduct of any other person, is called a "contract of indemnity."

Illustration.

A contracts to indemnify B against the consequences of any proceedings which C may take against B in respect of a certain sum of 200 rupees: The is a contract of indemnity.

125. The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor—
Right of indemnity-holder when sued.

(1) all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies;

(2) all costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorized him to bring or defend the suit;

(3) all sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor, and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the promisor authorized him to compromise the suit.

126. A "contract of guarantee" is a contract to perform the "Contract of guarantee," promise, or discharge the liability, of a "surety," "principal debtor," and "creditor." third person in case of his default. The person who gives the guarantee is called the "surety"; the person in respect of whose default the guarantee is given is called the "principal debtor"; and the person to whom the guarantee is given is called the "creditor." A guarantee may be either oral or written.

127. Anything done, or any promise made, for the benefit of the principal debtor, may be a sufficient consideration to the surety for giving the guarantee.
Consideration for guarantee.

- Book 2—"Record of Reasons for Refusal to register;" and
 Book 3—"Register of Wills and Authorities to adopt;" and
 Book 4—"Miscellaneous Register;"

B.—In the offices of Registrars—
 Book 5—"Register of Deposits of Wills."

(2) In Book 1 shall be entered or filed all documents or memoranda registered under sections 17, 18, and 89, which relate to immoveable property, and are not wills.

(3) In Book 4 shall be entered all documents registered under clauses (d) and (f) of section 18, which do not relate to immoveable property.

(4) Nothing in this section shall be deemed to require more than one set of books where the office of the Registrar has been amalgamated with the office of a Sub-Registrar.

52. (1) (a) The day, hour, and place of presentation, and the signature of every person presenting a document for registration, shall be endorsed on every such document at the time of presenting it;

(b) a receipt for such document shall be given by the registering officer to the person presenting the same; and,

(c) subject to the provisions contained in section 62, every document admitted to registration shall, without unnecessary delay, be copied in the book appropriated therefor according to the order of its admission.

(2) All such books shall be authenticated at such intervals and in such manner as is from time to time prescribed by the Inspector-General.

53. All entries in each book shall be numbered in a consecutive series which shall commence and terminate with the year, a fresh series being commenced at the beginning of each year.

54. In every office in which any of the books hereinbefore mentioned are kept, there shall be prepared current indexes of the contents of such books; and every entry in such indexes shall be made, so far as practicable, immediately after the registering officer has copied, or filed a memorandum of, the document to which it relates.

Illustrations.

(a.) A, in consideration of B's discounting, at A's request, bills of exchange for C, guarantees to B, for twelve months, the due payment of all such bills to the extent of 5,000 rupees. B discounts bills for C to the extent of 2,000 rupees. Afterwards, at the end of three months, A revokes the guarantee. This revocation discharges A from all liability to B for any subsequent discount. But A is liable to B for the 2,000 rupees on default of C.

(b.) A guarantees to B, to the extent of 10,000 rupees, that C shall pay all the bills that B shall draw upon him. B draws upon C. C accepts the bill. A gives notice of revocation. C dishonours the bill at maturity: A is liable upon his guarantee.

131. The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions.

132. Where two persons contract with a third person to undertake a certain liability, and also contract with each other that one of them shall be liable only on the default of the other, the third person not being a party to such contract, the liability of each of such two persons to the third person under the first contract is not affected by the existence of the second contract, although such third person may have been aware of its existence.

Illustration.

A and B make a joint and several promissory note to C. A makes it, in fact, as surety for B, and C knows this at the time when the note is made. The fact, that A, to the knowledge of C, made the note as surety for B, is no answer to a suit by C against A upon the note.

133. Any variance made without the surety's consent in the terms of the contract between the principal and the creditor discharges the surety as to transactions subsequent to the variance.

Illustrations.

(a.) A becomes surety to C for B's conduct as a manager in C's bank. Afterwards, B and C contract, without A's consent, that B's salary shall be raised, and that he shall become liable for one-fourth of the losses on overdraft. B allows a customer to overdraw, and the bank loses a sum of money. A is discharged from his suretyship by the variance made without his consent, and is not liable to make good this loss.

persons executing the documents to which such entries relate, or to their agents, and, after the death of the executants (but not before), to any person applying for such copies.

(3) Subject to the same provisions, copies of entries in Book No. 4, and in the Index relating thereto, shall be given to any person executing or claiming under the documents to which such entries respectively refer, or to his agent or representative.

(4) The requisite search under this section for entries in Books Nos. 3 and 4 shall be made only by the registering officer.

(5) All copies given under this section shall be signed and sealed by the registering officer, and shall be admissible for the purpose of proving the contents of the original documents.

(B)—As to the Procedure on admitting to Registration.

58. (1) On every document admitted to registration, other than a copy of a decree or order, or a copy sent to a registering officer under section 89, there shall be endorsed from time to time the following particulars, namely—

Particulars to be endorsed on documents admitted to registration.

(a) the signature and addition of every person admitting the execution of the document, and, if such execution has been admitted by the representative, assign, or agent of any person, the signature and addition of such representative, assign, or agent;

(b) the signature and addition of every person examined in reference to such document under any of the provisions of this Act; and

(c) any payment of money or delivery of goods made in the presence of the registering officer in reference to the execution of the document, and any admission of receipt of consideration, in whole or in part, made in his presence in reference to such execution.

(2) If any person admitting the execution of a document refuses to endorse the same, the registering officer shall nevertheless register it, but shall at the same time endorse a note of such refusal.

59. The registering officer shall affix the date and his signature

Endorsements to be dated and signed by registering officer.

to all endorsements made under sections 52 and 58 relating to the same document, and made in his presence on the same day.

performance of the contract. B omits to supply the timber: C is discharged from his suretyship.

185. A contract between the creditor and the principal debtor, by which the creditor makes a composition with, or promises to give time to, or not to sue, the principal debtor, discharges the surety, unless the surety assents to such contract.

Discharge of surety when creditor compounds with, gives time to, or agrees not to sue, principal debtor.

186 Where a contract to give time to the principal debtor is made by the creditor with a third person, and not with the principal debtor, the surety is not discharged.

Surety not discharged when agreement made with third person to give time to principal debtor.

Illustration

C, the holder of an overdue bill of exchange drawn by A as surety for B, and accepted by B, contracts with M to give time to B: A is not discharged

187. Mere forbearance on the part of the creditor to sue the principal debtor, or to enforce any other remedy against him, does not, in the absence of any provision in the guarantee to the contrary, discharge the surety.

Creditor's forbearance to sue does not discharge surety.

Illustration.

B owes to C a debt guaranteed by A. The debt becomes payable. C does not sue B for a year after the debt has become payable: A is not discharged from his suretyship.

188. Where there are co-sureties, a release by the creditor of one of them does not discharge the others; neither does it free the surety so released from his responsibility to the other sureties.*

Release of one co-surety does not discharge others from his responsibility to the other sureties.*

189. If the creditor does any act which is inconsistent with the rights of the surety, or omits to do any act which his duty to the surety requires him to do, and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged.

Discharge of surety by creditor's act or omission impairing surety's eventual remedy.

* See s. 44, *supra*.

which such person is not acquainted) interpreted to him in a language with which he is acquainted, and, if he admits the correctness of such note, it shall be signed by the registering officer.

(3) Every such note so signed shall be admissible for the purpose of proving that the statements therein recorded were made by the persons and under the circumstances therein stated.

(C)—*Special Duties of Sub-Registrar.*

64. Every Sub-Registrar, on registering a non-testamentary document relating to immovable property not wholly situate in his own sub-district, shall make a memorandum thereof, and of the endorsement and certificate (if any) thereon, and send the same to every other Sub-Registrar subordinate to the same Registrar as himself in whose sub-district any part of such property is situate, and such Sub-Registrar shall file the memorandum in his Book No. 1.

65. (1) Every Sub-Registrar, on registering a non-testamentary document relating to immovable property situate in more districts than one, shall also forward a copy thereof, and of the endorsement and certificate (if any) thereon, together with a copy of the map or plan (if any) mentioned in section 21, to the Registrar of every district in which any part of such property is situate other than the district in which his own sub-district is situate.

(2) The Registrar, on receiving the same, shall file in his Book No. 1 the copy of the document and the copy of the map or plan (if any), and shall forward a memorandum of the document to each of the Sub-Registrars subordinate to him within whose sub-district any part of such property is situate: and every Sub-Registrar receiving such memorandum shall file it in his Book No. 1.

(D)—*Special Duties of Registrar.*

66. (1) On registering any non-testamentary document relating to immovable property, the Registrar shall forward a memorandum of such document to each Sub-Registrar subordinate to himself in whose sub-district any part of the property is situate.

(c) A, as surety for B, makes a bond jointly with B, to C, to secure a loan from C to B. Afterwards, C obtains from B a further security for the same debt. Subsequently, C gives up the further security: A is not discharged.

142. Any guarantee which has been obtained by means of

Guarantee obtained by misrepresentation made by the creditor
misrepresentation invalid or with his knowledge and assent, concerning a material part of the transaction, is invalid.

143. Any guarantee which the creditor has obtained by

Guarantee obtained by means of keeping silence as to a
concealment invalid. material circumstance is invalid

Illustrations.

(a) A engages B as clerk to collect money for him. B fails to account for some of his receipts, and A, in consequence, calls upon him to furnish security for his duly accounting. C gives his guarantee for B's duly accounting. A does not acquaint C with B's previous conduct. B afterwards makes default. The guarantee is invalid.

(b) A guarantees to C payment for iron to be supplied by him to B to the amount of 2,000 tons. B and C have privately agreed that B should pay five rupees per ton beyond the market price, such excess to be applied in liquidation of an old debt. This agreement is concealed from A. A is not liable as a surety.

144. Where a person gives a guarantee upon a contract that

Guarantee on contract that the creditor shall not act upon it until
another person has joined in it as co-surety, the guarantee is not valid if that
other person does not join.*

145. In every contract of guarantee, there is an implied

Implied promise to indemnify surety promise by the principal debtor to
indemnify the surety, and the surety is
entitled to recover from the principal debtor whatever sum he has
rightfully paid under the guarantee, but no sums which he has paid
wrongfully.

Illustrations

(a) B is indebted to C, and A is surety for the debt. C demands payment from A, and, on his refusal, sues him for the amount. A defends the suit, having reasonable grounds for doing so, but he is compelled to pay the amount of the debt with costs; He can recover from B the amount paid by him for costs as well as the principal debt.

* See s. 33, *supra*

- (b) declaring what languages shall be deemed to be commonly used in each district;
- (c) declaring what territorial divisions shall be recognized under section 21;
- (d) regulating the amount of fines imposed under sections 25 and 34, respectively;
- (e) regulating the exercise of the discretion reposed in the registering-officer by section 63;
- (f) regulating the form in which registering-officers are to make memoranda of documents;
- (g) regulating the authentication by Registrars and Sub-Registrars of the books kept in their respective offices under section 51;
- (h) declaring the particulars to be contained in Indexes Nos. I., II., III., and IV., respectively;
- (i) declaring the holidays that shall be observed in the registration-offices; and,
- (j) generally, regulating the proceedings of the Registrars and Sub-Registrars.

(2) The rules so made shall be submitted to the Local Government for approval, and, after they have been approved, they shall be published in the official gazette, and, on publication, shall have effect as if enacted in this Act.

70. The Inspector-General may also, in the exercise of his discretion, remit, wholly or in part, the difference between any fine levied under section 25 or section 34 and the amount of the proper registration-fee.

PART XII.

OF REFUSAL TO REGISTER.

71. (1) Every Sub-Registrar refusing to register a document, except on the ground that the property to which it relates is not situate within his sub-district, shall make an order of refusal, and record his reasons for such order in his Book No. 2, and endorse the words "registration refused" on the document; and, on application made by any

(c.) A, B, and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 70,000 rupees: A, B, and C have to pay each the full penalty of his bond.

CHAPTER IX.

OF BAILMENT.

148. A "bailment" is the delivery of goods by one person 'Bailment,' 'bailor,' and to another for some purpose upon a 'bailee,' defined. contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the persons delivering them. The person delivering the goods is called the "bailor." The person to whom they are delivered is called the "bailee."

Explanation.—If a person, already in possession of the goods of another, contracts to hold them as a bailee, he thereby becomes the bailee, and the owner becomes the bailor, of such goods, although they may not have been delivered by way of bailment.

149. The delivery to the bailee may be made by doing any Delivery to bailee how thing which has the effect of putting made. the goods in the possession of the intended bailee, or of any person authorized to hold them on his behalf.

150. The bailor is bound to disclose to the bailee faults in Bailor's duty to disclose the goods bailed, of which the bailor is faults in goods bailed. aware, and which materially interfere with the use of them, or expose the bailee to extraordinary risks; and if he does not make such disclosure, he is responsible for damage arising to the bailee directly from such faults.

If the goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed.

Illustrations.

(a) A lends a horse, which he knows to be vicious, to B. He does not disclose the fact that the horse is vicious. The horse runs away. B is thrown and injured: A is responsible to B for damage sustained.

(b) A hires a carriage of B. The carriage is unsafe, though B is not aware of it, and A is injured: B is responsible to A for the injury.

- (b) whether the requirements of the law for the time being in force have been complied with on the part of the applicant or person presenting the document for registration, as the case may be, so as to entitle the document to registration.

75. (1) If the Registrar finds that the document has been executed, and that the said requirements have been complied with, he shall order the document to be registered.

Order by Registrar to re-
gister and procedure thereon.

(2) If the document is duly presented for registration within thirty days after the making of such order, the registering officer shall obey the same, and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59, and 60.

(3) Such registration shall take effect as if the document had been registered when it was first duly presented for registration.

(4) The Registrar may, for the purpose of any enquiry under section 74, summon and enforce the attendance of witnesses, and compel them to give evidence, as if he were a Civil Court, and he may also direct by whom the whole or any part of the costs of any such enquiry shall be paid, and such costs shall be recoverable as if they had been awarded in a suit under the Code of Civil Procedure, 1908.*

Order of refusal by Registrar.

76. (1) Every Registrar refusing—

(a) to register a document except on the ground that the property to which it relates is not situate within his district, or that the document ought to be registered in the office of a Sub-Registrar, or

(b) to direct the registration of a document under section 72 or section 75,

shall make an order of refusal, and record the reasons for such order in his Book No. 2, and, on application made by any person executing or claiming under the document, shall, without unnecessary delay, give him a copy of the reasons so recorded.

(2) No appeal lies from any order by a Registrar under this section or section 72.

77. (1) Where the Registrar refuses to order the document to be registered, under section 72 or section 76, any person claiming under

Suit in case of order of refusal by Registrar.

156. If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, and the goods can be separated or divided, the property in the goods remains in the parties respectively; but the bailee is bound to bear the expense of separation or division, and any damage arising from the mixture.

Illustration

A bails 100 bales of cotton marked with a particular mark to B. B, without A's consent, mixes the 100 bales with other bales of his own, bearing a different mark: A is entitled to have his 100 bales returned, and B is bound to bear all the expense incurred in the separation of the bales and any other incidental damage.

157. If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods in such a manner that it is impossible to separate the goods bailed from the other goods, and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods.

Illustration

A bails a barrel of Cape flour, worth Rs 45, to B. B, without A's consent, mixes the flour with country flour of his own, worth only Rs 25 a barrel. B must compensate A for the loss of his flour.

158 Where, by the conditions of the bailment, the goods are to be kept or to be carried, or to have work done upon them, by the bailee for the bailor, and the bailee is to receive no remuneration, the bailor shall repay to the bailee the necessary expenses incurred by him for the purpose of the bailment.

159 The lender of a thing for use may at any time require its return if the loan was gratuitous, even though he lent it for a specified time or purpose. But, if, on the faith of such loan made for a specified time or purpose, the borrower has acted in such a manner that the return of the thing lent before the time agreed upon would cause him loss exceeding the benefit actually derived by him from the loan, the lender must, if he compels the return, indemnify the borrower for the amount in which the loss so occasioned exceeds the benefit so derived.*

* See Story, *Bailments*, § 258

80 All fees for the registration of documents under this Act shall be payable on the presentation of such documents.

PART XIV.

OF PENALTIES.

81. Every registering officer appointed under this Act and every person employed in his office for the purposes of this Act, who being charged with the endorsing, copying, translating, or registering of any document presented or deposited under its provisions, endorses, copies, translates, or registers such document in a manner which he knows or believes to be incorrect, intending thereby to cause, or knowing it to be likely that he may thereby cause, injury, as defined in the Indian Penal Code,* to any person, shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both.

Penalty for making false statements, delivering false copies or translations, false personation, and abetment.

82. Whoever—

- (a) intentionally makes any false statement, whether on oath or not, and whether it has been recorded or not, before any officer acting in execution of this Act, in any proceeding or inquiry under this Act; or
 - (b) intentionally delivers to a registering officer, in any proceeding under section 19 or section 21, a false copy or translation of a document, or a false copy of a map or plan; or
 - (c) falsely personates another, and, in such assumed character, presents any document, or makes any admission or statement, or causes any summons or commission to be issued, or does any other act in any proceeding or inquiry under this Act; or
 - (d) abets anything made punishable by this Act;
- shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both.

* Act XLV. of 1860.

167. If a person other than the bailor claims goods bailed, he may apply to the Court to stop the delivery of the goods to the bailor, and to decide the title to the goods.

Right of third person claiming goods bailed.

168. The finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him to preserve the goods, and to find out the owner; but he may retain the goods against the owner until he receives such compensation; and, where the owner has offered a specific reward for the return of goods lost, the finder may sue for such reward, and may retain the goods until he receives it.*

Right of finder of goods;
may sue for specific reward offered

169. When a thing, which is commonly the subject of sale, is lost, if the owner cannot, with reasonable diligence, be found, or if he refuses, upon demand, to pay the lawful charges of the finder, the finder may sell it—

When finder of thing commonly on sale may sell it.

(1) when the thing is in danger of perishing or of losing the greater part of its value; or,

(2) when the lawful charges of the finder in respect of the thing found amount to two-thirds of its value†

170 Where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them

Bailee's particular lien.

Illustrations.

(a.) A delivers a rough diamond to B, a jeweller, to be cut and polished, which is accordingly done: B is entitled to retain the stone till he is paid for the services he has rendered

(b.) A gives cloth to B, a tailor, to make into a coat B promises A to deliver the coat as soon as it is finished, and to give A three months' credit for the price: B is not entitled to retain the coat until he is paid

171. Bankers, factors, wharfingers, attorneys of a High Court, and policy-brokers may, in the absence of a contract to the contrary, retain, as a security for a general balance of ac-

General lien of bankers, factors, wharfingers, attorneys, and policy-brokers.

* See Story, *Bailments*, § 121a

† New York Civil Code, § 943.

88. (1) Notwithstanding anything herein contained, it shall not be necessary for any officer of Government, or for the Administrator-General of Bengal, Madras, or Bombay, or for any Official Trustee or High Court, to appear in person or by agent at any registration-office in any proceeding connected with the registration of any instrument executed by him in his official capacity, or to sign as provided in section 58.

(2) Where any instrument is so executed, the registering officer to whom such instrument is presented for registration may, if he thinks fit, refer to any Secretary to Government, or to such officer of Government, Administrator-General, Official Trustee, Official Assignee, Sheriff, Receiver, or Registrar, as the case may be, for information respecting the same, and, on being satisfied of the execution thereof, shall register the instrument.

89. (1) Every officer granting a loan under the Land Improvement Loans Act, 1883,* shall send a copy of his order to the registering officer within the local limits of whose jurisdiction the whole or any part of the land to be improved, or of the land to be granted as collateral security, is situate; and such registering officer shall file the copy in his Book No. 1.

(2) Every Court granting a certificate of sale of immoveable property under the Code of Civil Procedure, 1908,† shall send a copy of such certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the immoveable property comprised in such certificate is situate, and such officer shall file the copy in his Book No. 1.

(3) Every officer granting a loan under the Agriculturists' Loans Act, 1884,‡ shall send a copy of any instrument whereby immoveable property is mortgaged for the purpose of securing the repayment of the loan, and, if any such property is mortgaged for the same purpose in the order granting the loan, a copy also of that order, to the registering officer within the local limits of whose jurisdiction the whole or any part of the property so mort-

* Act XIX. of 1883.

† Act XII. of 1884.

‡ Act V. of 1884.

If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.

177. If a time is stipulated for the payment of the debt or performance of the promise, for which the pledge is made, and the pawnor makes default in payment of the debt or performance of the promise at the stipulated time, he may redeem the goods pledged at any subsequent time before the actual sale of them;* but he must, in that case, pay, in addition, any expenses which have arisen from his default.

178. A person who is in possession of any goods, or of any bill of lading, dock-warrant, warehouse-keeper's certificate, wharfinger's certificate, or warrant or order for delivery, or any other document of title to goods, may make a valid pledge of such goods or documents: Provided that the pawnee acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the pawnor is acting improperly:

Provided also that such goods or documents have not been obtained from their lawful owner, or from any person in lawful custody of them, by means of an offence or fraud.†

179. Where a person pledges goods in which he has only a limited interest, the pledge is valid to the extent of that interest.

Suits by Bailees or Bailors against Wrong-doers.

180. If a third person wrongfully deprives the bailee of the use or possession of the goods bailed, or does them any injury, the bailee is entitled to use such remedies as the owner might have used in the like case if no bailment had been made; and either the bailor or the bailee may bring a suit against a third person for such deprivation or injury.

* For limitation, see the Indian Limitation Act (XV. of 1877), Sch. II., No. 145.

† Cf. the Factors Act (5 & 6 Vict., c. 39), ss 1 and 3.

(2) All such documents and maps shall, for the purposes of sections 48 and 49, be deemed to have been and to be registered in accordance with the provisions of this Act.

91. Subject to such rules and the previous payment of such fees as the Local Government prescribes in this behalf, all documents and maps mentioned in section 90, clauses (a), (b), (c), and (e), and all registers of the documents mentioned in clause (d), shall be open to the inspection of any person applying to inspect the same, and, subject as aforesaid, copies of such documents shall be given to all persons applying for such copies.

92. All rules relating to registration enforced in Lower Burma prior to the commencement of the Indian Registration Act, 1877,* shall be deemed to have had the force of law, and no suit or other proceeding shall be maintained against any officer or other person in respect of anything done under any of the said rules.

Repeals.

93. (1) The enactments mentioned in the schedule are repealed to the extent specified in the fourth column thereof.

(2) Nothing herein contained shall be deemed to affect any provision of any enactment in force in any part of British India, and not hereby expressly repealed.

* Act III. of 1877.

Illustration.

A owns a shop in Serampore, living himself in Calcutta, and visiting the shop occasionally. The shop is managed by B, and he is in the habit of ordering goods from C in the name of A for the purposes of the shop, and of paying for them out of A's funds with A's knowledge: B has an implied authority from A to order goods from C in the name of A for the purposes of the shop.

188. An agent, having an authority to do an act has authority to do every lawful thing which is necessary in order to do such act.

Extent of agent's authority.

An agent having an authority to carry on a business has authority to do every lawful thing necessary for the purpose, or usually done in the course of conducting such business.

Illustrations

(a) A is employed by B, residing in London, to recover at Bombay a debt due to B: A may adopt any legal process necessary for the purpose of recovering the debt, and may give a valid discharge for the same.

(b) A constitutes B his agent to carry on his business of a ship-builder: B may purchase timber and other materials, and hire workmen, for the purpose of carrying on the business.

189. An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence in his own case under similar circumstances.*

Agent's authority in an emergency.

Illustrations.

(a.) An agent for sale may have goods repaired if it be necessary.

(b.) A consigns provisions to B at Calcutta, with directions to send them immediately to C at Cuttack. B may sell the provisions at Calcutta if they will not bear the journey to Cuttack without spoiling.

Sub-Agents.

190. An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally, unless, by the ordinary custom of trade, a sub-agent may, or, from the nature of the agency, a sub-agent must, be employed.

When agent cannot delegate.

* But see s. 214, *infra*.

195 In selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case; and, if he does this, he is not responsible to the principal for the acts or negligence of the agent so selected.

Illustrations.

(a) A instructs B, a merchant, to buy a ship for him. B employs a ship-surveyor of good reputation to choose a ship for A. The surveyor makes the choice negligently, and the ship turns out to be unseaworthy, and is lost. B is not, but the surveyor is, responsible to A.

(b) A consigns goods to B, a merchant, for sale. B, in due course, employs an auctioneer in good credit to sell the goods of A, and allows the auctioneer to receive the proceeds of the sale. The auctioneer afterwards becomes insolvent without having accounted for the proceeds. B is not responsible to A for the proceeds.

Ratification.

196. Where acts* are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such act. If he ratify them, the same effects will follow as if they had been performed by his authority.

Right of person as to acts done for him without his authority.

Effect of ratification

197 Ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are done.

Ratification may be expressed or implied

Illustrations

(a) A, without authority, buys goods for B. Afterwards B sells them to C on his own account: B's conduct implies a ratification of the purchase made for him by A.

(b) A, without B's authority, lends B's money to C. Afterwards B accepts interest on the money from C: B's conduct implies a ratification of the loan.

198 No valid ratification can be made by a person whose knowledge requisite to valid ratification. knowledge of the facts of the case is materially defective.

Effect of ratifying unauthorized act forming part of a transaction.

199. A person ratifying any unauthorized act done on his behalf ratifies the whole of the transaction of which such act formed a part.

* That is, lawful acts. - -

ACT XX. OF 1863

(The Religious Endowments Act, 1863).*

RECEIVED THE G.G.'S ASSENT ON THE 10TH MARCH 1863.

An Act to enable the Government to divest itself of the Management of Religious Endowments.

WHEREAS it is expedient to relieve the Boards of Revenue and the Local Agents, in the Presidency of Fort William in Bengal and the Presidency of Fort Saint George, from the duties imposed on them.

Preamble.

* This short title has been given by the Indian Short Titles Act (XIV. of 1897)

For the Statement of Objects and Reasons of the Bill which became Act XX. of 1863, see *Calcutta Gazette*, 1862, p. 753; for Proceedings in Council relating to the Bill, see *ibid*, Supplement, p. 28, and *ibid*, 1863, p. 105.

Act XX. of 1863 has been extended to Kanara by Bom. Act VII. of 1865, which was specially passed for that purpose.

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts, namely:—

- (1) The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singhbhum (see *Gazette of India*, 1881, Pt. I., p. 504):
- (2) The scheduled portion of the Mirzapur District (see *Gazette of India*, 1879, Pt. I., p. 383):
- (3) Jaunsar Bawar (see *Gazette of India*, 1879, Pt. I., p. 382):
- (4) The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, and Dera Ghazi Khan (see *Gazette of India*, 1886, Pt. I., p. 361):
- (5) The Chief Commissionership of Assam (except the North Lushai Hills) (see *Gazette of India*, 1897, Pt. I., p. 299).

It has been extended, by notification under s 5 of the last-mentioned Act, to the following Scheduled Districts, namely:—

- (1) Kumaon and Garhwal (see *Gazette of India*, 1876, Pt. I., p. 606):
 - (2) The North-Western Provinces Tarai (see *Gazette of India*, 1876 Pt. I., p. 505):
 - (3) Ajmere and Merwara (see *Gazette of India*, 1877, Pt. I., p. 605).
- S. 22 applies to the whole of British India.

2,000—14-10-1909.

Act XX., 1863.—1

203. The principal may, save as is otherwise provided by the last-preceding section, revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal.

204. The principal cannot revoke the authority given to his agent after the authority has been partly exercised, so far as regards such acts and obligations as arise from acts already done in the agency

Illustrations.

(a) A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's moneys remaining in B's hands. B buys 1,000 bales of cotton in his own name, so as to make himself personally liable for the price. A cannot revoke B's authority so far as regards payment for the cotton.

(b.) A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's moneys remaining in B's hands. B buys 1,000 bales of cotton in A's name, and so as not to render himself personally liable for the price. A can revoke B's authority to pay for the cotton.

205. Where there is an express or implied contract that the agency should be continued for any period of time, the principal must make compensation* to the agent, or the agent to the principal, as the case may be, for any previous revocation or renunciation of the agency without sufficient cause.

206 Reasonable notice must be given of such revocation or renunciation; otherwise the damage thereby resulting to the principal or the agent, as the case may be, must be made good to the one by the other.

Revocation and renunciation may be expressed or implied.

207. Revocation and renunciation may be expressed or may be implied in the conduct of the principal or agent respectively.

Illustration.

A empowers B to let A's house. Afterwards A lets it himself. This is an implied revocation of B's authority.

* See s. 73, *supra*.

sustained, he must make it good to his principal, and, if any profit accrues, he must account for it.

Illustrations

(a.) A, an agent engaged in carrying on for B a business, in which it is the custom to invest from time to time, at interest, the moneys which may be in hand, omits to make such investment: A must make good to B the interest usually obtained by such investments.

(b.) B, a broker, in whose business it is not the custom to sell on credit, sells goods of A on credit to C, whose credit at the time was very high. C, before payment, becomes insolvent: B must make good the loss to A.

212. An agent is bound to conduct the business of the agency with as much skill as is generally possessed by persons engaged in similar business, unless the principal has notice of his want of skill. The agent is always bound to act with reasonable diligence, and to use such skill as he possesses; and to make compensation to his principal in respect of the direct consequences of his own neglect, want of skill, or misconduct, but not in respect of loss or damage which are indirectly or remotely caused by such neglect, want of skill, or misconduct.

Illustrations

(a.) A, a merchant in Calcutta, has an agent, B, in London, to whom a sum of money is paid on A's account, with orders to remit. B retains the money for a considerable time. A, in consequence of not receiving the money, becomes insolvent: B is liable for the money and interest from the day on which it ought to have been paid, according to the usual rate, and for any further direct loss—as, e.g., by variation of rate of exchange—but not further.

(b.) A, an agent for the sale of goods, having authority to sell on credit, sells to B on credit, without making the proper and usual enquiries as to the solvency of B. B, at the time of such sale, is insolvent. A must make compensation to his principal in respect of any loss thereby sustained.

(c.) A, an insurance-broker, employed by B to effect an insurance on a ship, omits to see that the usual clauses are inserted in the policy. The ship is afterwards lost. In consequence of the omission of the clauses, nothing can be recovered from the under-writers. A is bound to make good the loss to B.

(d.) A, a merchant in England, directs B, his agent at Bombay, who accepts the agency, to send him 100 bales of cotton by a certain ship. B, having it in his power to send the cotton, omits to do so. The ship arrives safely in England. Soon after her arrival, the price of cotton rises: B is

of 1863.]

RELIGIOUS ENDOWMENTS.

in respect of any property which is specially provided for under section 21 of this Act.

8. The members of the said committee shall be appointed from among persons professing the religion for the purposes of which the mosque, temple, or other religious establishment was founded or is now maintained, and in accordance, so far as can be ascertained, with the general wishes of those who are interested in the maintenance of such mosque, temple, or other religious establishment.

The appointment of the committee shall be notified in the official Gazette.

In order to ascertain the general wishes of such persons in respect of such appointment, the Local Government may cause an election to be held under such rules (not inconsistent with the provisions of this Act) as shall be framed by such Local Government.*

9. Every member of a committee appointed as above shall hold his office for life unless removed for misconduct or unfitness; and no such member shall be removed except by an order of the Civil Court as hereinafter provided.

10. Whenever any vacancy shall occur among the members of a committee appointed as above, a new member shall be elected to fill the vacancy by the persons interested as above provided.

The remaining members of the committee shall, as soon as possible, give public notice of such vacancy, and shall fix a day, which shall not be later than three months from the date of such vacancy, for an election of a new member by the persons interested as above provided, under rules for elections which shall be framed by the Local Government;†

* For rules made under this section for Madras, see p. 7 of the Madras List of Local Rules and Orders, Ed. 1894.

† For rules under this section for the N.-W. P., see the N.-W. P. and Oudh List of Local Rules and Orders, Ed. 1894, p. 32.

that B has bought the house, compel him to sell it to A at the price he gave for it.

217. An agent may retain,* out of the sums received on account of the principal in the business of the agency, all moneys due to himself in respect of advances made or expenses properly incurred by him in conducting such business, and also such remuneration as may be payable to him for acting as agent.

218. Subject to such deductions, the agent is bound to pay to his principal all sums received on his account.

219. In the absence of any special contract, payment for the performance of any act is not due to the agent until the completion of such act; but an agent may detain moneys received by him on account of goods sold, although the whole of the goods consigned to him for sale may not have been sold, or although the sale may not be actually complete.

220. An agent, who is guilty of misconduct in the business of the agency,† is not entitled to any remuneration in respect of that part of the business which he has misconducted.

Illustrations

(a) A employs B to recover 1,00,000 rupees from C, and to lay it out on good security. B recovers the 1,00,000 rupees, and lays out 90,000 rupees on good security, but lays out 10,000 rupees on security which he ought to have known to be bad, whereby A loses 2,000 rupees. B is entitled to remuneration for recovering the 1,00,000 rupees, and for investing the 90,000 rupees. He is not entitled to any remuneration for investing the 10,000 rupees, and he must make good the 2,000 rupees to B.

(b) A employs B to recover 1,000 rupees from C. Through B's misconduct the money is not recovered. B is entitled to no remuneration for his services, and must make good the loss.

221. In the absence of any contract to the contrary, an agent is entitled to retain goods, papers, and other property, whether moveable or

* See s. 221, *infra*. † See ss. 195, 211, 212, 213, 214, 218, *supra*.

13. It shall be the duty of every trustee, manager, and
 Duty of trustee, &c., as superintendent of a mosque, temple, or
 to accounts; religious establishment to which the
 provisions of this Act shall apply to keep regular accounts of his
 receipts and disbursements in respect of the endowments and
 expenses of such mosque, temple, or other religious establishment;

and it shall be the duty of every committee of management,
 and of committee. appointed or acting under the authority
 of this Act, to require from every trustee,
 manager, and superintendent of such mosque, temple, or other
 religious establishment, the production of such regular accounts of
 such receipts and disbursements at least once in every year; and
 every such committee of management shall themselves keep such
 accounts thereof.

14. Any person or persons interested in any mosque, temple,
 Person interested may or religious establishment, or in the
 singly sue in case of breach performance of the worship or of the
 of trust &c. service thereof, or the trusts relating
 thereto, may, without joining as plaintiff any of the other per-
 sons interested therein, sue before the Civil Court the trustee,
 manager, or superintendent of such mosque, temple, or religious
 establishment, or the member of any committee appointed under
 this Act, for any misfeasance, breach of trust, or neglect of duty,
 committed by such trustee, manager, superintendent, or member
 of such committee, in respect of the trusts vested in, or confided to,
 them respectively;

and the Civil Court may direct the specific performance of
 Powers of Civil Court. any act by such trustee, manager,
 superintendent, or member of a com-
 mittee,

and may decree damages and costs against such trustee-
 manager, superintendent, or member of a committee,

and may also direct the removal of such trustee, manager,
 superintendent, or member of a committee.

15. The interest required in order to entitle a person to sue
 Nature of interest entit- under the last-preceding section need
 ling person to sue. not be a pecuniary or a direct or im-
 mediate interest, or such an interest as would entitle the person
 suing to take any part in the management or superintendence of
 the trusts.

224. Where one person employs another to do an act which is criminal, the employer is not liable to the agent, either upon an express or an implied promise, to indemnify him against the consequences of that act.*

Illustrations.

(a) A employs B to beat C, and agrees to indemnify him against all consequences of the act. B thereupon beats C, and has to pay damages to C for so doing: A is not liable to indemnify B for those damages.

(b) B, the proprietor of a newspaper, publishes, at A's request, a libel upon C in the paper, and A agrees to indemnify B against the consequences of the publication, and all costs and damages of any action in respect thereof. B is sued by C, and has to pay damages and also incurs expenses: A is not liable to B upon the indemnity.

225. The principal must make compensation to his agent in respect of injury† caused to such agent by the principal's neglect or want of skill.

Illustration

A employs B as a bricklayer in building a house, and puts up the scaffolding himself. The scaffolding is unskillfully put up, and B is in consequence hurt. A must make compensation to B.

Effect of Agency on Contracts with Third Persons.

226. Contracts entered into through an agent, and obligations arising from acts done by an agent, may be enforced in the same manner, and will have the same legal consequences, as if the contracts had been entered into, and the acts done, by the principal in person.

Illustrations.

(a) A buys goods from B, knowing that he is an agent for their sale, but not knowing who is the principal. B's principal is the person entitled to claim from A the price of the goods, and A cannot, in a suit by the principal, set off against that claim a debt due to himself from B.

(b) A, being B's agent, with authority to receive money on his behalf, receives from C a sum of money due to B. C is discharged of his obligation to pay the sum in question to B.

* See s 24, *supra*. † Cf. the Indian Fatal Accidents Act (XIII. of 1855).

If the Court shall be of opinion that the suit has been for the benefit of the trust, and that no party to the suit is in fault, the Court may order the costs, or such portion as it may consider just, to be paid out of the estate.

19. Before giving leave for institution of a suit, or, after leave has been given, before any proceeding, the Court may require accounts of trust to be filed. If a suit is taken, or at any time when the suit is pending, the Court may order the trustee, manager, or superintendent, or any member of a committee, as the case may be, to file in Court the accounts of the trust, or such part thereof, as to the Court may seem necessary.

20. No suit or proceeding before any Civil Court under the preceding sections shall in any way affect or interfere with any proceeding in a Criminal Court for criminal breach of trust.

Cases in which endowments are partly for religious and partly for secular purposes.

21. In any case in which any land or other property has been granted for the support of an establishment partly of a religious and partly of a secular character,

or in which the endowment made for the support of an establishment is appropriated partly to religious and partly to secular uses,

the Board of Revenue, before transferring to any trustee, manager, or superintendent, or to any committee of management appointed under this Act, shall determine what portion, if any, of the said land or other property shall remain under the superintendence of the said Board for application to secular uses,

and what portion shall be transferred to the superintendence of the trustee, manager, or superintendent, or of the committee,

and also what annual amount, if any, shall be charged on the land or other property which may be so transferred to the superintendence of the said trustee, manager, or superintendent, or of the committee, and made payable to the said Board or to the local agents for secular uses as aforesaid:

In every such case the provisions of this Act shall take effect only in respect to such land and other property as may be so transferred.

Presumption of contract to contrary.

Such a contract shall be presumed to exist in the following cases:—

- (1.) Where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad :
- (2.) Where the agent does not disclose the name of his principal :
- (3.) Where the principal, though disclosed, cannot be sued.

231. If an agent makes a contract with a person who neither knows, nor has reason to suspect, that he is an agent, his principal may require the performance of the contract : but the other contracting party has, as against the principal, the same rights as he would have had as against the agent if the agent had been principal.

If the principal discloses himself before the contract is completed, the other contracting party may refuse to fulfill the contract, if he can show that if he had known who was the principal in the contract, or if he had known that the agent was not a principal, he would not have entered into the contract.

232. Where one man makes a contract with another, neither knowing, nor having reasonable ground to suspect, that the other is an agent, the principal, if he requires the performance of the contract, can only obtain such performance subject to the rights and obligations subsisting between the agent and the other party to the contract.

Illustration

A, who owes 500 rupees to B, sells 1,000 rupees' worth of rice to B. A is acting as agent for C in the transaction, but B has no knowledge, nor reasonable ground of suspicion, that such is the case. C cannot compel B to take the rice without allowing him to set off A's debt.

233. In cases where the agent is personally liable, a person dealing with him may hold either him or his principal, or both of them, liable.

Illustration

A enters into a contract with B to sell him 100 bales of cotton, and afterwards discovers that B was acting as agent for C. A may sue either B or C, or both, for the price of the cotton.

ACT I. OF 1880.*
The Religious Societies Act, 1880.

RECEIVED THE G.-G.'S. ASSENT ON THE 9TH JANUARY, 1880.

An Act to confer certain Powers on Religious Societies.

WHEREAS it is expedient to simplify the manner in which certain bodies of persons associated for the purpose of maintaining religious worship may hold property acquired for such purpose, and to provide for the dissolution of such bodies and the adjustment of their affairs and for the decision of certain questions relating to such bodies; It is hereby enacted as follows:—

Preamble.

Short title.

Commencement.

Local extent.

1. This Act may be called "The Religious Societies Act, 1880;"

It shall come into force at once, and shall extend to the whole of British India;†

but nothing herein contained shall apply to any Hindus, Muhammadans or Baddimists, or to any persons, whom the Governor-General in Council may from time to time, by notification in the Gazette of India, exclude from the operation of this Act.

2. When any body of persons associated for the purpose of maintaining religious worship has acquired, or hereafter shall acquire any property,

Appointment of new trustees in cases not otherwise provided for.

* For Statement of Objects and Reasons, see *Gazette of India*, 1879, Part V, p. 770; for Proceedings in Council, see *ibid.*, 1879, Supplement, pp. 598, 745 and 174, *ibid.*, 1880, Supplement, pp. 170 and 171. Act I of 1880 has been declared, by notification under s. 3. (2) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following scheduled districts in the Chutia Nagpore Division—The Districts of Hazaribagh, Lohardaga, and Manbhum and Pargana Dhalbhum, and the Kolhan in the District of Singhbhum—See *Gazette of India*, Oct. 22, 1881, Pt. I., p. 504. The District of Lohardaga included at this time the present District of Palamau, which was separated in 1894.

made, or frauds committed, by agents in matters which do not fall within their authority, do not affect their principals.

Illustrations.

(a) A, being B's agent for the sale of goods, induces C to buy them by a misrepresentation which he was not authorized by B to make: The contract is voidable as between B and C at the option of C.

(b) A, the captain of B's ship, signs bills of lading without having received on board the goods mentioned therein: The bills of lading are void as between B and the pretended consignor.

CHAPTER XI.

OF PARTNERSHIP.

239. "Partnership" is the relation which subsists between persons who have agreed to combine their property, labour, or skill in some business, and to share the profits thereof between them.*

"Firm" defined. Persons who have entered into partnership with one another are called collectively a "firm."

Illustrations.

(a.) A and B buy 100 bales of cotton, which they agree to sell for their joint account: A and B are partners in respect of such cotton.

(b) A and B buy 100 bales of cotton, agreeing to share it between them: A and B are not partners.

(c) A agrees with B, a goldsmith, to buy and furnish gold to B, to be worked up by him and sold, and that they shall share in the resulting profit or loss: A and B are partners.

(d) A and B agree to work together as carpenters, but that A shall receive all profits, and shall pay wages to B. A and B are not partners.

(e.) A and B are joint owners of a ship: This circumstance does not make them partners.

240. A loan to a person engaged or about to engage in any trade or undertaking, upon a contract with such person that the lender shall receive interest at a rate varying
Lender not a partner by advancing money for share of profits.

* This would apply to members of Joint-stock Companies, but the law applicable to them is saved by s. 256, *infra*.

ACT XXI. OF 1860

(The Societies' Registration Act, 1860).*

RECEIVED THE G. G.'S ASSENT ON THE 21ST MAY 1860.

An Act for the Registration of Literary, Scientific, and Charitable Societies.

WHEREAS it is expedient that provision should be made for improving the legal condition of societies established for the promotion of literature, science, or the fine arts, or for the diffusion of useful knowledge, or for charitable purposes; It is enacted as follows:—

1. Any seven or more persons associated for any literary, scientific, or charitable purpose, or for any such purpose as is described in section 20 of this Act, may, by subscribing their names to a memorandum of association, and filing the same

* This short title has been given by the Indian Short Titles Act (XIV. of 1897).

The Act (with the exception of the first four sections) is based on the Literary and Scientific Institutions Act, 1854 (Stat. 17 & 18 Vict, c. 112), ss. 20, *et seq.*

It has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by s. 3 of the Laws Local Extent Act (XV. of 1874).

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts, namely —

- (1) West Jalpaiguri (see *Gazette of India*, 1881, Pt. I., p. 74) :
- (2) The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singbhum (see *Gazette of India*, 1881, Pt. I., p. 504) :
- (3) The scheduled portion of the Mirzapur District (see *Gazette of India*, 1879, Pt. I., p. 383) :
- (4) Jaunsar Bawar (see *Gazette of India*, 1879, Pt. I., p. 302) :
- (5) The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, and Dera Ghazi Khan (see *Gazette of India*, 1886, Pt. I., p. 48) :

247. A person who is under the age of majority according to the law* to which he is subject may be admitted to the benefits of partnership, but cannot be made personally liable for any obligation of the firm; but the share of such minor in the property of the firm is liable for the obligations of the firm.

248. A person who has been admitted to the benefits of partnership under the age of majority* becomes, on attaining that age, liable for all obligations incurred by the partnership since he was so admitted unless he gives public notice, within a reasonable time, of his repudiation of the partnership.

249. Every partner is liable for all debts and obligations incurred while he is a partner in the usual course of business by, or on behalf of, the partnership; but a person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of such firm for anything done before he became a partner.

250. Every partner is liable to make compensation to third persons in respect of loss or damage arising from the neglect or fraud of any partner in the management of the business of the firm.

251. Each partner, who does any act necessary for, or usually done in, carrying on the business of such a partnership as that of which he is a member, binds his co-partners to the same extent as if he were their agent duly appointed for that purpose.

Exception.—If it has been agreed between the partners that any restriction shall be placed upon the power of any one of them, no act done in contravention of such agreement shall bind the firm with respect to persons having notice of such agreement.

Illustrations.

(a.) A and B trade in partnership, A residing in England, and B in India. A draws a bill of exchange in the name of the firm. B has no notice of the bill, nor is he at all interested in the transaction. The

* See the Indian Majority Act (IX. of 1875).

list shall be filed with the Registrar of Joint-stock Companies, of the names, addresses, and occupations of the governors, council, directors, committee, or other governing body then entrusted with the management of the affairs of the society.

5. The property, moveable and immoveable, belonging to a society registered under this Act, if not vested in trustees, shall be deemed to be vested, for the time being, in the governing body of such society, and in all proceedings, civil and criminal, may be described as the property of the governing body of such society by their proper title.

6. Every society registered under this Act may sue or be sued in the name of the president, chairman, or principal secretary, or trustees, as shall be determined by the rules and regulations of the society, and, in default of such determination, in the name of such person as shall be appointed by the governing body for the occasion :

Provided that it shall be competent for any person having a claim or demand against the society to sue the president or chairman, or principal secretary, or the trustees thereof, if, on application to the governing body, some other officer or person be not nominated to be the defendant.

7. No suit or proceeding in any Civil Court shall abate or discontinue by reason of the person, by or against whom such suit or proceeding shall have been brought or continued, dying or ceasing to fill the character in the name whereof he shall have sued or been sued, but the same suit or proceeding shall be continued in the name of or against the successor of such person.

8. If a judgment shall be recovered against the person or officer named on behalf of the society, such judgment shall not be put in force against the property, moveable or immoveable, or against the body of such person or officer, but against the property of the society.

The application for execution shall set forth the judgment, the fact of the party against whom it shall have been recovered having sued or having been sued, as the case may be, on behalf of the society only, and shall require to have the judgment enforced against the property of the society.

- (2.) All partners are entitled to share equally in the profits of the partnership-business, and must contribute equally towards the losses sustained by the partnership :
- (3.) Each partner has a right to take part in the management of the partnership-business :
- (4.) Each partner is bound to attend diligently to the business of the partnership, and is not entitled to any remuneration for acting in such business :
- (5.) When differences arise as to ordinary matters connected with the partnership business, the decision shall be according to the opinion of the majority of the partners; but no change in the nature of the business of the partnership can be made except with the consent of all the partners :*
- (6.) No person can introduce a new partner into a firm without the consent of all the partners :
- (7.) If, from any cause whatsoever, any member of a partnership ceases to be so, the partnership is dissolved as between all the other members :
- (8.) Unless the partnership has been entered into for a fixed term, any partner may retire from it at any time :
- (9.) Where a partnership has been entered into for a fixed term, no partner can, during such term, retire except with the consent of all the partners, nor can he be expelled by his partners for any cause whatever except by order of Court .
- (10.) Partnerships, whether entered into for a fixed term or not, are dissolved by the death of any partner.

When Court may dissolve ' partnership.

254. At the suit of a partner, the Court may dissolve the partnership in the following cases:—

- (1.) When a partner becomes of unsound mind :
- (2.) When a partner, other than the partner suing, has been adjudicated an insolvent under any law relating to insolvent debtors :
- (3.) When a partner, other than the partner suing, has done any act by which the whole interest of such partner is legally transferred to a third person :

* See s. 252, *supra*.

purposes, within the meaning of this Act, or to amalgamate such society, either wholly or partially, with any other society, such governing body may submit the proposition to the members of the society in a written or printed report; and may convene a special meeting for the consideration thereof according to the regulations of the society;

but no such proposition shall be carried into effect unless such report shall have been delivered or sent by post to every member of the society ten days previous to the special meeting convened by the governing body for the consideration thereof, nor unless such proposition shall have been agreed to by the votes of three-fifths of the members delivered in person or by proxy, and confirmed by the votes of three-fifths of the members present at a second special meeting convened by the governing body at an interval of one month after the former meeting.

13. Any number not less than three-fifths of the members of any society may determine that it shall be dissolved, and thereupon it shall be dissolved forthwith, or at the time then agreed upon, and all necessary steps shall be taken for the disposal and settlement of the property of the society, its claims and liabilities, according to the rules of the said society applicable thereto, if any, and, if not, then as the governing body shall find expedient:

Provided that, in the event of any dispute arising among the said governing body or the members of the society, the adjustment of its affairs shall be referred to the principal Court of original civil jurisdiction of the district in which the chief building of the society is situate; and the Court shall make such order in the matter as it shall deem requisite:

Provided that no society shall be dissolved unless three-fifths of the members shall have expressed a wish for such dissolution by their votes delivered, in person or by proxy, at a general meeting convened for the purpose:

Provided that, whenever the Government is a member of, or a contributor to, or otherwise interested in, any society registered under this Act, such society shall not be dissolved without the consent of Government.

profits made in such business, and must make compensation to the firm for any loss occasioned thereby.

260. A continuing guarantee, given either to a firm or to a third person, in respect of the transactions of a firm, is, in the absence of agreement to the contrary, revoked as to future transactions by any change in the constitution of the firm to which, or in respect of the transactions of which, such guarantee was given.*

261. The estate of a partner who has died is not, in the absence of an express agreement, liable in respect of any obligation incurred by the firm after his death.

262. Where there are joint debts due from the partnership and also separate debts due from any partner, the partnership-property must be applied, in the first instance, in payment of the debts of the firm, and, if there is any surplus, then the share of each partner must be applied in payment of his separate debts, or paid to him. The separate property of any partner must be applied, first, in the payment of his separate debts, and the surplus (if any) in the payment of the debts of the firm.

263. After a dissolution of partnership, the rights and obligations of the partners continue in all things necessary for winding up the business of the partnership.

264. Persons dealing with a firm will not be affected by a dissolution of which no public notice has been given unless they themselves had notice of such dissolution.

265 † Where a partner is entitled to claim a dissolution of partnership, or where a partnership has terminated, the Court may, in the absence of any contract to the contrary, wind up the business of the partnership, provide for the payment

* Cf. the Mercantile Law Amendment Act, 1856 (19 & 20 Vict., c. 97), s. 4

† S 265 has been substituted for the original section by the Indian Contract Act Amendment Act (IV of 1886), s. 1.

In the case of a company or society registered under Act XLIII. of 1850,* the directors shall be deemed to be such governing body.

In the case of a society not so registered, if no such body shall have been constituted on the establishment of the society, it shall be competent for the members thereof, upon due notice, to create for itself a governing body to act for the society thenceforth.

18. In order to any such society as is mentioned in the last-
Such societies to file preceding section obtaining registry under memorandum, &c., with this Act, it shall be sufficient that the Registrar of Joint-stock governing body file with the Registrar of Companies. Joint-stock Companies† a memorandum showing the name of the society, the objects of the society, and the names, addresses, and occupations of the governing body, together with a copy of the rules and regulations of the society certified as provided in section 2, and a copy of the report of the proceedings of the general meeting at which the registration was resolved on.

19. Any person may inspect all documents filed with the Registrar under this Act on payment of
Inspection of documents. a fee of one rupee for each inspection, and any person may require a copy or extract of any document, or any part of any document, to be certified by the Registrar, on payment of two annas for every hundred words of such copy or extract; and such
Certified copies. certified copy shall be *prima-facie* evidence of the matters therein contained in all legal proceedings whatever.

20. The following societies may be registered under this Act:
To what societies Act charitable societies, the military orphan applies funds or societies established at the several presidencies of India, societies established for the promotion of science, literature, or the fine arts, for instruction, the diffusion of useful knowledge, the foundation or maintenance of libraries or reading-rooms for general use among the members or open to the public, or public museums and galleries of painting and other works of art, collections of natural history, mechanical and philosophical inventions, instruments, or designs.

* Repealed by the Indian Companies Act (X. of 1866), s. 219.

† In s 18, the words, "under Act XIX of 1857," repealed by the Repealing Act (XVI. of 1874), have here been omitted. See now the Indian Companies Act (VI. of 1882), s 255.

SCHEDULE :

ENACTMENTS REPEALED.

Statutes.

No. and year of Statute.	TITLE.	Extent of repeal
Stat 29 Car. II., cap. 3.*	An Act for Prevention of Frauds and Perjuries.	Sections 1, 2, 3, 4, and 17.
Stat. 11 & 12 Vict., cap. 21 †	To consolidate and amend the Law relating to Insolvent Debtors in India.	Section 42.

Acts.

No. and year of Act.	TITLE	Extent of repeal.
Act XIII of 1840 ...	An Act for the amendment of the Law regarding Factors, by extending to the Territories of the East India Company, in cases governed by English Law, the provisions of the Stat 4 Geo IV, Chap 83, as altered and amended by the Stat 6 Geo. IV, Chap 94	The whole.
Act XIV. of 1840 ...	An Act for rendering a Written Memorandum necessary to the Validity of certain Promises and Engagements, by extending to the Territories of the East India Company, in cases governed by English Law, the provisions of the Stat. 9 Geo. IV., Chap 14	The whole

* Short title, "The Statute of Frauds."—See the Short Titles Act, 1896 (59 & 60 Vict., c. 14).

† The Indian Insolvency Act, 1848.

ACT III. OF 1872.*

Marriage.

RECEIVED THE G.-G.'s ASSENT ON THE 22ND MARCH 1872.

An Act to provide a Form of Marriage in certain Cases.

WHEREAS it is expedient to provide a form of marriage for persons who do not profess the Christian,

Preamble.

Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh, or Jaina religion, and to legalize certain marriages the validity of which is doubtful: It is hereby enacted as follows:—

Local extent. 1. This Act extends to the whole of British India.

Commencement. [Repealed by Act XVI. of 1874.]

2. Marriages may be celebrated under this Act between persons neither of whom professes the Christian or the Jewish, or the Hindu or the Muhammadan, or the Parsi or the Buddhist, or the Sikh or the Jaina religion, upon the following conditions:—

(1) neither party must, at the time of the marriage, have a husband or wife living:

(2) the man must have completed his age of eighteen years, and the woman her age of fourteen years, according to the Gregorian calendar:

(3) each party must, if he or she has not completed the age of twenty-one years, have obtained the consent of his or her father or guardian to the marriage:

* Act III. of 1872 has been declared in force in the Santál Parganás by Reg. III. of 1872, s. 3, as amended by Reg. III. of 1899, and in British Baluchistan by Reg. I. of 1890, s. 3.

It has been declared, by notification under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

The Districts of Házáribágh, Lohárdagá, and Mánbhūm, and Parganá Dhalbhum, and the Kolhán in the District of Singbhūm.—See *Gazette of India*, Oct. 22, 1881, Pt. I., p. 504.

The North-Western Provinces Taráí.—See *Gazette of India*, Sep. 23, 1876, Pt. I., p. 505.

6. Fourteen days after notice of an intended marriage has been given under section 4, such marriage may be solemnized, unless it has been previously objected to in the manner hereinafter mentioned.

Objection to marriage.

Any person may object to any such marriage on the ground that it would contravene some one or more of the conditions prescribed in clause (1), (2), (3), or (4) of section 2.

The nature of the objection made shall be recorded in writing by the Registrar in the register, and shall, if necessary, be read over and explained to the person making the objection, and shall be signed by him, or on his behalf.

7. On receipt of such notice of objection, the Registrar shall not proceed to solemnize the marriage until the lapse of fourteen days from the receipt of such objection, if there be a Court of competent jurisdiction open at the time, or, if there be no such Court open at the time, until the lapse of fourteen days from the opening of such Court.

The person objecting to the intended marriage may file a suit in any Civil Court having local jurisdiction (other than a Court of Small Causes) for a declaratory decree, declaring that such marriage would contravene some one or more of the conditions prescribed in clause (1), (2), (3), or (4) of section 2.

Objector may file suit.

8. The officer before whom such suit is filed shall thereupon give the person presenting it a certificate to the effect that such suit has been filed.

If such certificate be lodged with the Registrar within fourteen days from the receipt of notice of objection, if there be a Court of competent jurisdiction open at the time, or, if there be no such Court open at the time, within fourteen days of the opening of such Court, the marriage shall not be solemnized till the decision of such Court has been given, and the period allowed by law for appeals from such decision has elapsed, or, if there be an appeal from such decision, till the decision of the Appellate Court has been given.

If such certificate be not lodged in the manner and within the period prescribed in the last-preceding paragraph, or if the decision of the Court be that such marriage would not contravene any one or more of the conditions prescribed in clause (1), (2), (3), or (4) of section 2, such marriage may be solemnized.

13A.* The Registrar shall send to the Registrar-General of Births, Deaths, and Marriages† for the territories within which his district is situate, at such intervals as the Governor-General in Council, from time to time, directs, a true copy, certified by him, in such form as the Governor-General in Council, from time to time, prescribes, of all entries made by him in the said Marriage Certificate Book since the last of such intervals.

Transmission of certified copies of entries in marriage Certificate Book to the Registrar-General of Births, Deaths, and Marriages.

14. The Local Government shall prescribe the fees to be paid to the Registrar for the duties to be discharged by him under this Act.

Fees.

The Registrar may, if he think fit, demand payment of any such fee before solemnization of the marriage or performance of any other duty in respect of which it is payable.

The said Marriage Certificate Book shall, at all reasonable times, be open for inspection, and shall be admissible as evidence of the truth of the statements therein contained. Certified extracts therefrom shall, on application, be given by the Registrar on the payment to him by the applicant of a fee to be fixed by the Local Government for each such extract.

15. Every person who, being at the time married, procures a marriage of himself to be solemnized under this Act, shall be deemed to have committed an offence under section 494 or section 495 of the Indian Penal Code, as the case may be; and the marriage so solemnized is void.

16. Every person married under this Act who, during the lifetime of his or her wife or husband, contracts any other marriage, shall be subject to the penalties provided in sections 494 and 495 of the Indian Penal Code for the offence of marrying again during the lifetime of a husband or wife, whatever may be the religion which he or she professed at the time of such second marriage.

Punishment of bigamy.

* S 13A has been inserted by the Births, Deaths, and Marriages Registration Act (VI of 1886), s. 29.

† As to the duty of the Registrar-General to make and keep indexes of the certified copies sent to his office under this section, see the said Act VI. of 1886, s. 7.

and that the said right should be made capable of easy enforcement in every part of the said territories ;

And whereas it is doubtful whether the Act of Parliament, 5 & 6 Vict., c. 45,* entitled "*An Act to amend the Law of Copyright*," although such Act extend to every part of the British dominions, has made appropriate and sufficient provision for the enforcement in every part of the said territories subject to the government of the East India Company of the said right by proprietors thereof : and wheher the said Act of Parliament has made provision for the enforcement of the said right by or against any persons not being subject to the jurisdiction of the Courts established by Her Majesty's Charter .

1. It is therefore hereby enacted that the copyright in every

Duration of copyright in book published in the lifetime of its author within the said territories after the passing of the Act of Parliament, 3

& 4 Wm. IV., c. 85,† entitled "*An Act for effecting an arrangement with the East India Company, and for the better government of His Majesty's Indian Territories till the 30th day of April 1854*," shall endure for the natural life of such author, and for the further term of seven years commencing at the time of his death, and shall be the property of such author and his assigns : Provided always that,

Proprietorship in book if the said term of seven years shall expire before the end of forty-two years from the publication of such book, the death.

(9) The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singbhum—See *Gazette of India*, 1881, Pt I, p. 504

(10) The Island of Perim—See *Gazette of India*, 1886, Pt. I, p. 51

(11) The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, and Dera Ghazi Khan.—See *Gazette of India*, 1886, Pt. I., p 81

(12) The District of Lahaul—See *Gazette of India*, 1886, Pt I, p. 301. It has been extended, by notification under s 5 of the last-mentioned Act, to the following Scheduled Districts :—

(1) The Districts of Kumaon and Garhwal—See *Gazette of India*, 1876, Pt. I, p. 606 :

(2) The North-Western Provinces Tarai—See *Gazette of India*, 1876, Pt. I, p 506 :

(3) Upper Burma except the Shan States—See *Gazette of India*, 1893, Pt II., p 272

* Short title, "The Indian Copyright Act, 1842"—See the Short Titles Act, 1896 (Stat. 59 & 60 Vict., c 14).

† Short title, "The Government of India Act, 1833."—See the Short Titles Act (Stat. 59 & 60 Vict., c 14)

FIRST SCHEDULE.

(See section 4.)

NOTICE OF MARRIAGE.

To _____, a Registrar of Marriages under
 Act III. of 1872 for the _____ District.

I hereby give you notice that a marriage under Act III. of 1872 is intended to be had, within three calendar months from the date hereof, between me and the other party herein named and described (that is to say).—

Names.	Condition.	Rank or profession.	Age.	Dwelling place.	Length of residence.
A B	Unmarried Widower.	Landowner.	Of full age.	...	23 days.
C D	Spinster.	...	Minor.	...	...

Witness my hand, this _____ day of _____ 19 .
 (Signed) A B

SECOND SCHEDULE.

(See Section 10.)

DECLARATION TO BE MADE BY THE BRIDEGROOM.

1, A B, hereby declare as follows —

1 I am at the present time unmarried :

2 I do not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh, or Jaina religion :

3. I have completed my age of eighteen years :

4. I am not related to C D [*the bride*] in any degree of consanguinity or affinity which would, according to the law to which I am subject, or to which the said C D is subject, and subject to the provisos of clause (4) of section 2 of Act III. of 1872, render a marriage between us illegal :

[*And when the bridegroom has not completed his age of twenty-one years .*

5 The consent of my father [*or guardian, as the case may be*] has been given to a marriage between myself and C D, and has not been re-
 voked.]

of any entry in such book, certified under his hand, to any person requiring the same, on payment to him of the sum of two rupees, and such copies, so certified, shall be received in evidence in all Courts and in all summary proceedings, and shall be *prima-facie* proof of the proprietorship or assignment of copyright or license as therein expressed, but subject to be rebutted by other evidence.*

4. [Punishment for making false entry in registry, &c.]
Repealed by Act XVII. of 1862, s. 2.

5.† It shall be lawful for the proprietor of copyright in any book published after the passing of the Copyright proprietor's said Act of Parliament, 3 & 4 Wm. IV., right to make entries in re- said Act, c. 85,‡ to make entry, in the registry book, of the title of such book, the time of the first publication, and the name and place of abode of the publisher, thereof, and the name and place of abode of the proprietor of the copyright of the said book, or of any portion of such copyright in the form in that behalf given in the schedule to this Act annexed, upon payment of the sum of two rupees to the said Secretary.§ It shall be lawful for every Assignment of copy- right by entry in registry such registered proprietor to assign his interest, or any portion of his interest therein, by making entry in the said book of registry of such assignment, and of the name and place of abode of the assignee thereof, in the form given in that behalf in the said schedule, on payment of the like sum; and such assignment, so entered, shall be effectual in law to all intents and purposes whatsoever,|| and

* Cf. the Copyright Act, 1842 (Stat 5 & 6 Vict, c. 45), s. 11

† In s 5, the words, "And it is enacted that, after the passing of this Act," repealed by the Repealing Act (XVI. of 1874), have here been omitted.

‡ Short title, "The Government of India Act, 1833"—See the Short Titles Act (Stat. 59 and 60 Vict, c. 14).

§ In s. 5, the words, "and that," repealed by the Repealing Act (XVI. of 1874), have here been omitted

|| In s 5, the words, "without being subject to any stamp or duty," repealed by s 2 and Sch. III of the Indian Stamp Act (I. of 1879), have here been omitted That Act exempts assignments of copyright under this section from stamp-duty—See Sch II, No 5, Act I of 1879. But, as Act I. of 1879 has been superseded by the new Stamp Act (II. of 1899), see now Sch I, No. 23 (*exemption*), of the latter Act

THIRD SCHEDULE.

(See section 13.)

REGISTRAR'S CERTIFICATE.

I, *E F*, certify that on the _____ of 18____ appeared before me *A B* and *C D*, each of whom, in my presence and in the presence of three credible witnesses, whose names are signed hereunder, made the declarations required by Act III. of 1872, and that a marriage under the said Act was solemnized between them in my presence.

(Signed) *E F*,

*Registrar of Marriages under Act III. of 1872
for the District of _____*

(Signed) *A B*.*C D*

G H,
I F,
K L, } [three witnesses].

Dated the _____

day of _____

18____

FOURTH SCHEDULE.

(See section 20.)

[Repealed by Act XII. of 1876.]

or shall have in his possession, for sale or hire, any such book so unlawfully printed without such consent as aforesaid, such offender shall be liable to a suit in the highest local Court exercising original civil jurisdiction.*

8† In any suit or action brought in any of the Courts of Judicature established by Her Majesty's Charter under the provisions of this Act against any person for printing any such book for sale, hire, or exportation, or for selling, publishing, or exposing to sale or hire, or causing to be sold, published, or exposed to sale or hire, or for having in his possession for sale or hire, any such book so unlawfully printed, the defendant, on pleading therein, shall give to the plaintiff a notice in writing of any objections on which he means to rely on the trial of such action ;

and if the nature of his defence be that the plaintiff in such action was not the author or first publisher of the book in which he shall by such action claim copyright, or is not the proprietor of the copyright therein, or that some other person than the plaintiff was the author or first publisher of such book, or is the proprietor of the copyright therein, then the defendant shall specify in such notice the name of the person who he alleges to have been the author or

first publisher of such book, or the proprietor of the copyright therein, together with the title of such book, and the time when, and the place where, such book was first published,

otherwise the defendant in such action shall not, at the trial or hearing of such action, be allowed to give any evidence that the plaintiff in such action was not the author or first publisher of the book in which he claims such copyright as aforesaid, or that he was not the proprietor of the copyright therein, and at such trial or hearing no other objection shall be allowed to be made on behalf of such defendant than the objections stated in such notice, or that any other

highest local Court exercising original civil jurisdiction [*in such part of the said territories*]

* Cf. the Copyright Act, 1842 (Stat 5 & 6 Vict, c 45), s 15.

† In s. 8, the words, "And it is hereby enacted that after the passing of this Act," repealed by the Repealing Acts (XVI. of 1874 and XII. of 1876), have here been omitted.

ACT I. OF 1877. The Specific Relief Act.

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volume, part, essay, article, and portion so composed and paid for, shall be the property of such proprietor, projector, publisher, or conductor, who shall enjoy the same rights as if he were the actual author thereof, and shall have such term of copyright therein as is given to the authors of books by this Act, except only that, in the case of essays, articles, or portions forming part of and first published in reviews, magazines, or other periodical works of a like nature after the term of twenty-eight years from the first publication thereof respectively, the right of publishing the same in a separate form shall revert to the author for the remainder of the term given by this Act:

Provided always that, during the term of twenty-eight years, Consent of author to the said proprietor, projector, publisher, publication singly. or conductor shall not publish any such essay, article, or portion, separately, or singly without the consent, previously obtained, of the author thereof or his assigns:

Provided also that nothing herein contained shall alter or Employe's right to pub- affect the right of any person who shall lish separately. have been or shall be so employed as aforesaid to publish any such his composition in a separate form, who by any contract, express or implied, may have reserved, or may hereafter reserve, to himself such right; but every author reserving, retaining, or having such right, shall be entitled to the copyright in such composition when published in a separate form according to this Act without prejudice to the right of such proprietor, projector, publisher, or conductor as aforesaid.

11.* The proprietor of the copyright in any encyclopædia, Rights of proprietor of review, magazine, periodical work, or copyright on making entry other work, published in a series of books in registry. or parts,† shall be entitled to all the benefits of the registration in the office of the Secretary to the Government of India for the Home Department, under this Act, on entering in the said book of registry the title of such encyclopædia, review, periodical work, or other work published in a series of books or parts, the time of the first publication of the first volume, number, or part thereof, or of the first volume, number, or part first published after the passing of this Act in any such work which shall have been published heretofore, and after the passing of the said

* In s. 11, the words, "And it is hereby enacted that," repealed by the Repealing Act (XVI. of 1874), have here been omitted.

† *Roussac v. Thacher*, 1 Hyde 9, 12, 13

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in equity, or any summary proceeding in respect of any infringement of such copyright, unless he shall, before commencing such action, suit, or proceeding, have caused an entry to be made in the book of registry at the office of the said Secretary of such book pursuant to this Act :

Provided [always that the omission to make such entry shall

Omission to make entry not affect the copyright in any book, not to affect copyright, &c. nor the right to sue or proceed in respect of the infringement thereof, except the right to sue or proceed in respect of the infringement thereof under the provisions of this Act.

15.* If any [action or suit shall be commenced or brought

Plea, by defendant, and in any of the Courts of Judicature established by Her Majesty's Charter against special evidence in actions any person or persons whomsoever for things done under Act.

Defendant to have full costs if successful. doing or causing to be done anything

in pursuance of this Act, the defendant or defendants in such action may plead the general issue, and give the special matter in evidence; and if, upon such action, a verdict shall be given for the defendant, or the plaintiff shall become nonsuited, or discontinue his action, then the defendant shall have and recover his full costs, for which he shall have the same remedy as a defendant in any case by law hath in the said last-mentioned Courts.

16.* All† indictments, informations, and other criminal

Limitation of criminal proceedings for any offence which proceedings for breach of shall be committed against this Act, shall be brought, sued, and commenced

within twelve calendar months next after such offence committed, or else the same shall be void, and of none effect.

17. [*Saving of pre-existing rights.*] *Repealed by the Repealing Act (XIV. of 1870).*

* In ss. 15 and 16, the words, "And it is enacted that," repealed by the Repealing Act (XVI of 1874), have here been omitted

† In s. 16, the words, "actions, suits, bills," repealed by the Indian Limitation Act (IX. of 1871), Sch. I., have here been omitted.

ACT I. OF 1877.*

The Specific Relief Act,

RECEIVED THE G.-G.'S ASSENT ON THE 7TH FEBRUARY 1877.
An Act to define and amend the Law relating to certain

kinds of Specific Relief.
 WHEREAS it is expedient to define and amend the law relating

*to certain kinds of specific relief obtain-
 able in civil suits; It is hereby enacted
 as follows:—*

Preamble.

PART I.—PRELIMINARY.

Short title.

1. This Act may be called "The
 Specific Relief Act, 1877."

It extends to the whole of British India, except the Sched-
 uled Districts as defined in Act No.
 Local extent. XIV. of 1874;

*Act I. of 1877 has been extended in its entirety to the following
 Scheduled Districts:—

(1) Sindh —See *Gazette of India*, Dec. 4, 1880, Pt. I, p. 676.
 (2) Western Jalpaiguri —See *Gazette of India*, Dec. 16, 1882, Pt. I,
 p. 511.

(3) The Districts of Hazáribágh, Lohárdaga, and Mámbhum, and Par-
 gana Dhálbhum, in the District of Singbhum. —See *Gazette of India*, Feb.
 16, 1878, Pt. I, p. 82.

(4) The Jhánsi Division. —See *Gazette of India*, Sep. 26, 1879, Pt. I,
 p. 592.

The Scheduled Districts of the Panjáb —See *Gazette of India*, Sep.
 22, 1877, Pt. I, p. 562.

(5) The Scheduled Districts of the Central Provinces. —See *Gazette of*
India, Dec. 13, 1879, Pt. I, p. 772.

(6) Coorg. —See *Gazette of India*, June 3, 1882, Pt. I, p. 217.
 (7) The Districts of Kámrup, Naugong, Darrang, Sibságar, Lakhim-
 pur, Goalpara (excluding the Eastern Dávárs), Silhat, and Káchár (exclud-
 ing the North Káchár Hills). —See *Gazette of India*, Nov. 10, 1877, Pt. I,
 p. 662.

(8) The Cantonment of Morár. —See *Gazette of India*, Sep. 7, 1878,
 Pt. I, p. 559.

Ss. 3 and 9 of the Act have been extended to the taluqs of Bhádrá-
 chalam and Rákapulli and the Rampa Country. —See *Gazette of India*, Oct.
 4, 1879, Pt. I, p. 630.

(h.) A buys land from B, having notice that C is in occupation of the land. A omits to make any inquiry as to the nature of C's interest therein. A is a trustee, within the meaning of this Act, of C, to the extent of that interest.

'settlement' means any instrument (other than a will or codicil as defined by the Indian Succession Act) whereby the destination or devolution of successive interest in moveable or immoveable property is disposed of, or is agreed to be disposed of:

and all words occurring in this Act, which are defined in the Words defined in Con- Indian Contract Act, 1872, shall be tract Act. deemed to have the meanings respectively assigned to them by that Act.

Savings.

4. Except where it is herein otherwise expressly enacted, nothing in this Act shall be deemed—

(a) to give any right to relief in respect of any agreement which is not a contract;

(b) to deprive any person of any right to relief, other than specific performance, which he may have under any contract; or

(c) to affect the operation of the Indian Registration Act* on documents.

Specific relief how given.

5. Specific relief is given—

(a) by taking possession of certain property, and delivering it to a claimant;

(b) by ordering a party to do the very act which he is under an obligation to do;

(c) by preventing a party from doing that which he is under an obligation not to do;

(d) by determining and declaring the rights of parties otherwise than by an award of compensation; or

(e) by appointing a Receiver.

Preventive relief.

6. Specific relief granted under clause (c) of section 5 is called preventive relief.

* The reference to Act VIII. of 1871 is altered in accordance with Act III. of 1877, s. 2.

CALCUTTA.

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3 TO 5, BOW STREET.**

Explanation 2.—A special or temporary right to the present possession of property is sufficient to support a suit under this section.

Illustrations.

(a) A bequeaths land to B for his life, with remainder to C. A dies. B enters on the land, but C, without B's consent, obtains possession of the title-deeds. B may recover them from C.

(b) A pledges certain jewels to B to secure a loan. B disposes of them before he is entitled to do so. A, without having paid or tendered the amount of the loan, sues B for possession of the jewels. The suit should be dismissed, as A is not entitled to their possession, whatever right he may have to secure their safe custody.

(c) A receives a letter addressed to him by B. B gets back the letter without A's consent. A has such a property therein as entitles him to recover it from B.

(d) A deposits books and papers for safe custody with B. B loses them, and C finds them, but refuses to deliver them to B when demanded. B may recover them from C, subject to C's right (if any) under section 168 of the Indian Contract Act, 1872.

(e.) A, a warehouse-keeper, is charged with the delivery of certain goods to Z, which B takes out of A's possession. A may sue B for the goods.

11. Any person having the possession or control of a particular article of moveable property, of which

Liability of person in possession, not as owner, to deliver to person entitled to immediate possession.

he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession in any

of the following cases :—

(a) when the thing claimed is held by the defendant as the agent or trustee of the claimant ;

(b) when compensation in money would not afford the claimant adequate relief for the loss of the thing claimed ;

(c) when it would be extremely difficult to ascertain the actual damage caused by its loss ;

(d) when the possession of the thing claimed has been wrongfully transferred from the claimant.

Illustrations.

of clause a —A, proceeding to Europe, leaves his furniture in charge of B as his agent during his absence. B, without A's authority, pledges the furniture to C, and C, knowing that B had no right to pledge the furniture, advertises it for sale. C may be compelled to deliver the furniture to A, for he holds it as A's trustee.

SPECIFIC RELIEF.

11.

of clause *b* —A agrees to buy, and B agrees to sell, a picture by a dead painter and two rare China vases. A may compel B specifically to perform this contract, for there is no standard for ascertaining the actual damage which would be caused by its non-performance.

of clause *c*.—A contracts with B to sell him a house for Rs. 1,000. B is entitled to a decree directing A to convey the house to him, he paying the purchase-money.

In consideration of being released from certain obligations imposed on it by its Act of Incorporation a railway-company contract with Z to make an archway through their railway to connect lands of Z severed by the railway, to construct a road between certain specified points, to pay a certain annual sum towards the maintenance of this road, and also to construct a siding and a wharf as specified in the contract. Z is entitled to have this contract specifically enforced, for his interest in its performance cannot be adequately compensated for by money; and the Court may appoint a proper person to superintend the construction of the archway, road, siding, and wharf.

A contracts to sell and B contracts to buy, a certain number of railway-shares of a particular description. A refuses to complete the sale. B may compel A specifically to perform this agreement, for the shares are limited in number, and not always to be had in the market, and their possession carries with it the status of a shareholder, which cannot otherwise be procured.

A contracts with B to paint a picture for B, who agrees to pay therefor Rs. 1,000. The picture is painted. B is entitled to have it delivered to him on payment or tender of the Rs. 1,000.

of clause *d* —A transfers without endorsement, but for valuable consideration, a promissory note to B. A becomes insolvent, and C is appointed his assignee. B may compel C to endorse the note, for C has succeeded to A's liabilities, and a decree for pecuniary compensation for not endorsing the note would be fruitless.

13. Notwithstanding anything contained in section 56 of the Indian Contract Act, a contract is not wholly impossible of performance because a portion of its subject-matter, existing at its date, has ceased to exist at the time of the performance.

Illustrations.

(a.) A contracts to sell a house to B for a lakh of rupees. The day after the contract is made the house is destroyed by a cyclone. B may be compelled to perform his part of the contract by paying the purchase-money.

(b.) In consideration of a sum of money payable by B, A contracts to grant an annuity to B for B's life. The day after the contract has been made, B is thrown from his horse and killed. B's representative may be compelled to pay the purchase-money.

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- 19E. Provision for case where too low a court-fee has been paid on probates, &c.
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24. [*Process served under this chapter to be held to be process within meaning of Code of Civil Procedure*] *Repealed by the Repealing and Amending Act (XII. of 1891)*

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29. Amended documents
30. Cancellation of stamp

belong to A, waiving all right to compensation either for the deficiency or for loss sustained by him through A's neglect or default, B is entitled to a decree directing A to convey those 50 bighas to him on payment of the purchase-money.

(b) A contracts to sell to B an estate with a house and garden for a lakh of rupees. The garden is important for the enjoyment of the house. It turns out that A is unable to convey the garden. A cannot obtain a decree against B for the specific performance of the contract; but, if B is willing to pay the price agreed upon, and to take the estate and house without the garden, waiving all rights to compensation either for the deficiency or for loss sustained by him through A's neglect or default, B is entitled to a decree directing A to convey the house to him on payment of the purchase-money.

16. When a part of a contract, which, taken by itself, can and ought to be specifically performed, stands independent part of contract. on a separate and independent footing from another part of the same contract which cannot or ought not to be specifically performed, the Court may direct specific performance of the former part.

17. The Court shall not direct the specific performance of a part of a contract except in cases coming under one or other of the three last preceding sections.

Bar in other cases of specific performance of part of contract.

18. Where a person contracts to sell or let certain property, having only an imperfect title thereto, the purchaser or lessee (except as otherwise provided by this chapter) has the following rights :—

Purchaser's rights against vendor with imperfect title.

(a) if the vendor or lessor has, subsequently to the sale or lease, acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest ;

(b) where the concurrence of other persons is necessary to validate the title, and they are bound to convey at the vendor's or lessor's request, the purchaser or lessee may compel him to procure such concurrence ;

(c) where the vendor professes to sell unincumbered property, but the property is mortgaged for an amount not exceeding the purchase-money, and the vendor has, in fact, only a right to redeem it, the purchaser may compel him to redeem the mortgage, and to obtain a conveyance from the mortgagee ;

THE COURT FEES ACT, 1870

(Act VII. of 1870).*

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

Received His Excellency's Assent on 11th March 1870.

CHAPTER I.

PRELIMINARY.

Short title.	1. This Act may be called the Court Fees Act, 1870.
Extent of Act.	It extends to the whole of British India : *
Commencement of Act	And it shall come into force on the first day of April 1870.

* For the Statement of Objects and Reasons, see *Gazette of India*, 1869, Pt. V., p. 57, for Proceedings in Council, see *ibid.* 1869, Supplement, pp. 1179 and 1452, *ibid.*, 1870, Supplement, pp. 52, 378, 421, 427, and 434

Act VII of 1870 has been declared in force—

in Upper Burma generally (except the Shan States) by the Burma Laws Act (XIII of 1898), s 4 (1), Sch I,

in British Baluchistan, by the British Baluchistan Laws Regulation (I. of 1890), s. 3 ;

in the Santhal Parganas, by the Santhal Parganas Settlement Regulation (III of 1872), as amended by the Santhal Parganas Justice and Laws Regulation (III of 1899),

in the Sub division of Angul, by the Angul District Regulation (I of 1894), s 3.

It has further been declared, by notification under s 3 (a) of the Scheduled Districts Act (XIV of 1874), to be in force in the following Scheduled Districts, namely—

the District of Hazaribagh (see *Gazette of India*, 1881, Pt I, p. 507).

the District of Lohardaga (now called the Ranchi District) (see *Calcutta Gazette*, 1899, Pt. I., p 44, *ib.*, 1881, Pt I, p. 508) ; the District of Lohardaga then included the present District of Palaman separated in 1894 ,

of the explanation —A, a purchaser, sues B, his vendor, for specific performance of a contract for the sale of a patent. Before the hearing of the suit, the patent expires. The Court may award A compensation for the non-performance of the contract, and may, if necessary, amend the plaint for that purpose.

A sues for the specific performance of a resolution passed by the directors of a public company, under which he was entitled to have a certain number of shares allotted to him, and for compensation for the non-performance of the resolution. All the shares had been allotted before the institution of the suit. The Court may, under this section, award A compensation or the non-performance.

20. A contract, otherwise proper to be specifically enforced, Liquidation of damages not may be thus enforced, though a sum be a bar to specific performance. named in it as the amount to be paid in case of its breach, and the party in default is willing to pay the same.

Illustration.

A contracts to grant B an under-lease of property held by A under C, and that he will apply to C for a license necessary to the validity of the under-lease, and that, if the license is not procured, A will pay B Rs. 10,000. A refuses to apply for the license, and offers to pay B the Rs. 10,000. B is nevertheless entitled to have the contract specifically enforced if C consents to give the license.

(b) Contracts which cannot be specifically enforced.

Contracts not specifically enforceable.

21. The following contracts cannot be specifically enforced :—

- (a) a contract for the non-performance of which compensation in money is an adequate relief;
- (b) a contract which runs into such minute or numerous details, or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such that the Court cannot enforce specific performance of its material terms;
- (c) a contract the terms of which the Court cannot find with reasonable certainty;
- (d) a contract which is in its nature revocable;
- (e) a contract made by trustees either in excess of their powers or in breach of their trust;
- (f) a contract made by or on behalf of a corporation or public company created for special purposes, or by the promoters of such company, which is in excess of its powers;

(e) elsewhere—the Local Government or such officer as the Local Government may, by notification in the official Gazette, appoint in this behalf

CHAPTER II.

FEES IN THE HIGH COURTS, AND IN THE COURTS OF SMALL CAUSES AT THE PRESIDENCY-TOWNS.

3. The fees payable for the time being to the clerks and officers (other than the sheriffs and attorneys) of the High Courts established by Letters Patent, by virtue of the power conferred by Statute 24 & 25 Victoria, Chapter 104, section 15,^{*}

or chargeable in each of such Courts under No. 11 of the First, and Nos. 7, 12, 14,† 20, and 21 of the Second, Schedule to this Act annexed;

and the fees for the time being chargeable in the Courts of Small Causes at the Presidency-towns‡ and their several offices;

shall be collected in manner hereinafter appearing.

4. No document of any of the kinds specified, in the First or Second Schedule to this Act annexed, as chargeable with fees, shall be filed, exhibited, or recorded in, or shall be received or furnished by, any of the said High Courts in any case coming before such Court in the exercise of its extraordinary original civil jurisdiction;

or in the exercise of its extraordinary original criminal jurisdiction;

or in the exercise of its jurisdiction as regards appeals from the judgment of two or more Judges of the said Court, or of a Division Court;

^{*} See the Indian High Courts Act, 1861 (24 & 25 Vict. c. 104)

† Here the number "16," repealed by the Repealing and Amending Act (XII of 1891), has been omitted

‡ See the Presidency Small Cause Courts Act (XV of 1839), Ch. X For amount of fees payable in certain cases, see the North-Western Provinces Rent Act (XII of 1881), s. 95, as amended by the North-Western Provinces Rent Act (XIV. of 1886), s. 2.

particular crops on the land in his possession, and deliver them to A when cut and ready for delivery :

A contracts with B that, in consideration of Rs. 1,000 to be paid to him by B, he will paint a picture for B :

A contracts with B to execute certain works which the Court cannot superintend :

A contracts to supply B with all the goods of a certain class which B may require.

A contracts with B to take from B a lease of certain house for a specified term at a specified rent, "if the drawing-room is handsomely decorated," even if it is held to have so much certainty that compensation can be recovered for its breach.

A contracts to marry B

The above contracts cannot be specifically enforced

to *c*.—A, the owner of a refreshment-room, contracts with B to give him accommodation there for the sale of his goods, and to furnish him with the necessary appliances. A refuses to perform his contract. The case is one for compensation, and not for specific performance, the amount and nature of the accommodation and appliances being undefined

to *d*.—A and B contract to become partners in a certain business, the contract not specifying the duration of the proposed partnership. This contract cannot be specifically performed, for, if it were so performed, either A or B might at once dissolve the partnership.

to *e*.—A is a trustee of land with power to lease it for seven years. He enters into a contract with B to grant a lease of the land for seven years, with a covenant to renew the lease at the expiry of the term. This contract cannot be specifically enforced.

The directors of a company have power to sell the concern with the sanction of a general meeting of the shareholders. They contract to sell it without any such sanction. This contract cannot be specifically enforced.

The trustees, A and B, empowered to sell trust-property worth a lakh of rupees, contract to sell it to C for Rs. 30,000. The contract is so disadvantageous as to be a breach of trust. C cannot enforce its specific performance.

The promoters of a company for working mines contract that the company, when formed, shall purchase certain mineral property. They take no proper precautions to ascertain the value of such property, and in fact agree to pay an extravagant price therefor. They also stipulate that the vendors shall give them a bonus out of the purchase-money. This contract cannot be specifically enforced

to *f*.—A company, existing for the sole purpose of making and working a railway, contracts for the purchase of a piece of land for the purpose of erecting a cotton-mill thereon. This contract cannot be specifically enforced.

to *g*.—A contracts to let for twenty-one years to B the right to use such part of a certain railway made by A as was upon B's land, and that B should have a right of running carriages over the whole line on certain terms, and might require A to supply the necessary engine-power, and that A

7. The amount of fee payable under this Act in the suits*
 Computation of fees payable next hereinafter mentioned shall be
 able in certain suits— computed as follows:—

i. In suits for money (including suits for damages or compensation, or arrears of maintenance or annuities, or of other sums payable periodically)—according to the amount claimed :

ii. In suits for maintenance and annuities or other sums payable periodically—according to the value of the subject-matter of the suit, and such value shall be deemed to be ten times the amount claimed to be payable for one year :

iii. In suits for moveable property other than money, where the subject-matter has a market-value—according to such value at the date of presenting the plaint :

iv. In suits—

(a) for moveable property where the subject-matter has no market-value, as, for instance, in the case of documents relating to title,

(b) to enforce the right to share in any property on the ground that it is joint family-property,

(c) to obtain a declaratory decree or order where consequential relief is prayed,

for an injunction,

(d) to obtain an injunction,

(e) for a right to some benefit (not herein otherwise provided for) to arise out of land, and

for accounts ;

(f) for accounts—

according to the amount at which the relief sought is valued in the plaint or memorandum of appeal :

* As to the valuation of suits for the purpose of determining the jurisdiction of Courts, see the Suits' Valuation Act (VII of 1887).

II Where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff.

Illustrations.

(e) A is entitled to some land under his father's will on condition that, if he sells it within twenty-five years, half the purchase-money shall go to B. A, forgetting the condition, contracts, before the expiration of the twenty-five years, to sell the land to C. Here the enforcement of the contract would operate so harshly on A that the Court will not compel its specific performance in favour of C.

(f) A and B, trustees, join their beneficiary, C, in a contract to sell the trust-estate to D, and personally agree to exonerate the estate from heavy incumbrances to which it is subject. The purchase-money is not nearly enough to discharge those incumbrances, though, at the date of the contract, the vendors believed it to be sufficient. Specific performance of the contract should be refused to D.

(g) A, the owner of an estate, contracts to sell it to B, and stipulates that he (A) shall not be obliged to define its boundary. The estate really comprises a valuable property not known to either to be part of it. Specific performance of the contract should be refused to B, unless he waives his claim to the unknown property.

(h) A contracts with B to sell him certain land, and to make a road to it from a certain railway-station. It is found afterwards that A cannot make the road without exposing himself to litigation. Specific performance of the part of the contract relating to the road should be refused to B, even though it may be held that he is entitled to specific performance of the rest with compensation for loss of the road.

(i) A, a lessee of mines, contracts with B, his lessor, that at any time during the continuance of the lease B may give notice of his desire to take the machinery and plant used in and about the mines, and that he shall have the articles specified in his notice delivered to him at a valuation on the expiry of the lease. Such a contract might be most injurious to the lessee's business, and specific performance of it should be refused to B.

(j) A contracts to buy certain land from B. The contract is silent as to access to the land. No right of way to it can be shown to exist. Specific performance of the contract should be refused to B.

(k) A contracts with B to buy from B's manufactory, and not elsewhere, all the goods of a certain class used by A in his trade. The Court cannot compel B to supply the goods; but, if he does not supply them, A may be ruined, unless he is allowed to buy them elsewhere. Specific performance of the contract should be refused to B.

The following is a case in which the Court may properly exercise a discretion to decree specific performance:—

III. Where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

Provided that, in the territories subject to the Governor of
 proviso as to Bombay Pre- Bombay in Council, the
 sidancy ; value of the land shall be
 deemed to be,—

(1) where the land is held on settlement for a period not exceeding thirty years, and pays the full assessment to Government—a sum equal to five times the survey-assessment ;

(2) where the land is held on a permanent settlement, or on a settlement for any period exceeding thirty years, and pays the full assessment to Government—a sum equal to ten times the survey-assessment ; and,

(3) where the whole or any part of the annual survey-assessment is remitted—a sum computed under paragraph (1) or paragraph (2) of this proviso, as the case may be, in addition to ten times the assessment or the portion of assessment so remitted :

Explanation.—The word “ estate,” as used in this paragraph, means any land subject to the payment of revenue, for which the proprietor or farmer or raiyat shall have executed a separate engagement to Government, or which, in the absence of such engagement, shall have been separately assessed with revenue ;

(4) where the subject-matter is a house or garden—ac-
 for houses and gardens ; cording to the market-
 value of the house or
 garden :

vi In suits to enforce a right of pre-emption—according to
 to enforce a right of pre- the value (computed in
 emption, accordance with para-
 graph v. of this section) of the land, house, or
 garden in respect of which the right is claimed .

vii In suits for the interest of an assignee of land-revenue
 for interest of assignee of —fifteen times his nett
 land-revenue ; profits as such for the year
 next before the date of presenting the plaint .

viii. In suits to set aside an attachment of land or of an in-
 to set aside an attachment : terest in land or revenue
 —according to the amount
 for which the land or interest was attached .

(h) when the promoters of a public company have, before its incorporation, entered into a contract for the purposes of the company, and such contract is warranted by the terms of the incorporation, the company,

(e) *For whom Contracts cannot be specifically enforced.*

Personal bars to the relief.

24. Specific performance of a contract cannot be enforced in favour of a person—

- (a) who could not recover compensation for its breach;
- (b) who has become incapable of performing, or violates, any essential term of the contract that on his part remains to be performed;
- (c) who has already chosen his remedy, and obtained satisfaction for the alleged breach of contract; or
- (d) who, previously to the contract, had notice that a settlement of the subject-matter thereof (though not founded on any valuable consideration) had been made, and was then in force.

Illustrations.

to clause *a*—A, in the character of agent for B, enters into an agreement with C to buy C's house. A is, in reality, acting, not as agent for B, but on his own account. A cannot enforce specific performance of this contract.

to clause *b*—A contracts to sell B a house, and to become tenant thereof for a term of fourteen years from the date of the sale at a specified yearly rent. A becomes insolvent. Neither he nor his assignee can enforce specific performance of the contract.

A contracts to sell B a house and garden in which there are ornamental trees, a material element in the value of the property as a residence. A, without B's consent, fells the trees. A cannot enforce specific performance of the contract.

A, holding land under a contract with B, for a lease, commits waste, or treats the land in an unhusbandlike manner. A cannot enforce specific performance of the contract.

A contracts to let, and B contracts to take, an unfinished house; B contracting to finish the house, and the lease to contain covenants on the part of A to keep the house in repair. B finishes the house in a very defective manner, he cannot enforce the contract specifically, though A and B may sue each other for compensation for breach of it.

to clause *c*.—A contracts to let, and B contracts to take, a house for a specified term at a specified rent. B refuses to perform the contract. A

(e) to recover the occupancy of "immoveable property" from which a tenant has been illegally ejected by the landlord, and

(f) for abatement of rent—

according to the amount of the rent of the "immoveable property" to which the suit refers payable for the year next before the date of presenting the plaint.

8. The amount of fee payable under this Act on a memo-

Fee on memorandum of appeal against order relating to compensation.

randum of appeal against an order relating to compensation under any Act for the time being in force for the acquisition of land for public purposes† shall be computed according to the difference between the amount awarded and the amount claimed by the appellant.

9. If the Court sees reason to think that the annual nett pro-

Power to ascertain nett profits or market-value

fits or the market-value of any such land, house, or garden as is mentioned in section 7, paragraphs v and vi, have or has been wrongly estimated, the Court may, for the purpose of computing the fee payable in any suit therein mentioned, issue a commission to any proper person, directing him to make such local or other investigation as may be necessary, and to report thereon to the Court.

10. 1. If, in the result of any such investigation, the Court

Procedure where nett profits or market-value wrongly estimated.

finds the nett profits or market value have or has been wrongly estimated, the Court, if the estimation has been excessive, may, in its discretion, refund the excess paid as such fee; but, if the estimation has been insufficient, the Court shall require the plaintiff to pay so much additional fee as would have been payable had the said market-value or nett profits been rightly estimated.

2. In such case the suit shall be stayed until the additional fee is paid. If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed.)

* The words quoted in cl (e) to para. vi and the last para of s 7 have been substituted for the word "land" by Act VI of 1905

† See now the Land Acquisition Act (I of 1894)

‡ Cl. iii., having been repealed by the Repealing and Amending Act (XII of 1891), has been omitted. The repealed clause ran as follows "Section 180 of the Code of Civil Procedure shall be construed as if the words, 'the market-value of any property or,' were inserted after the word 'ascertaining,' and as if the words, 'or annual nett profits,' were inserted after the word 'damages'."

obtain the performance sought, except with the variation, so set up, in the following cases (namely):—

- (a) where by fraud or mistake of fact the contract of which performance is sought is in terms different from that which the defendant supposed it to be when he entered into it;
- (b) where, by fraud, mistake of fact, or surprise, the defendant entered into the contract under a reasonable misapprehension as to its effect as between himself and the plaintiff;
- (c) where the defendant, knowing the terms of the contract and understanding its effect, has entered into it relying upon some misrepresentation by the plaintiff, or upon some stipulation on the plaintiff's part which adds to the contract, but which he refuses to fulfil;
- (d) where the object of the parties was to produce a certain legal result, which the contract as framed is not calculated to produce;
- (e) where the parties have, subsequently to the execution of the contract, contracted to vary it.

Illustrations.

(a.) A, B, and C sign a writing, by which they purport to contract each to enter into a bond to D for Rs. 1,000. In a suit by D to make A, B, and C separately liable each to the extent of Rs. 1,000, they prove that the word 'each' was inserted by mistake; that the intention was that they should give a joint bond for Rs. 1,000. D can obtain the performance sought only with the variation thus set up.

(b) A sues B to compel specific performance of a contract in writing to buy a dwelling-house. B proves that he assumed that the contract included an adjoining yard and the contract was so framed as to leave it doubtful whether the yard was so included or not. The Court will refuse to enforce the contract, except with the variation set up by B.

(c) A contracts in writing to let to B a wharf, together with a strip of A's land delineated in a map. Before signing the contract, B proposed orally that he should be at liberty to substitute for the strip mentioned in the contract another strip of A's land of the same dimensions, and to this A expressly assented. B then signed the written contract. A cannot obtain specific performance of the written contract, except with the variation set up by B.

(d) A and B enter into negotiations for the purpose of securing land to B for his life, with remainder to his issue. They execute a contract, the terms of which are found to confer an absolute ownership on B. The contract so framed cannot be specifically enforced.

for a second decision by the lower Court, the Appellate Court shall grant to the appellant a certificate authorizing him to receive back from the Collector the full amount of fee paid on the memorandum of appeal.

Provided that, if, in the case of a remand in appeal, the order of remand shall not cover the whole of the subject-matter of the suit, the certificate so granted shall not authorize the appellant to receive back more than so much fee as would have been originally payable on the part or parts of such subject-matter in respect whereof the suit has been remanded.

14. Where an application* for a review of judgment† is presented on or after the ninetieth day from the date of the decree, the Court, unless the delay was caused by the applicant's laches, may, in its discretion, grant him a certificate authorizing him to receive back from the Collector so much of the fee paid on the application as exceeds the fee which would have been payable had it been presented before such day.‡

15. Where an application for a review of judgment is admitted, and where, on the rehearing, the Court reverses or modifies its former decision on the ground of mistake in law or fact, the applicant shall be entitled to a certificate from the Court authorizing him to receive back from the Collector so much of the fee paid on the application§ as exceeds the fee payable on any other application to such Court under the Second Schedule to this Act, No. 1, clause (b) or clause (d).

But nothing in the former part of this section shall entitle the applicant to such certificate where the reversal or modification is due, wholly or in part, to fresh evidence which might have been produced at the original hearing.

16. [*Repealed by Act V. of 1908, Sch. V.*]

* As to refund of fees paid on applications to the Chief Court or the Court of the Financial Commissioner of the Panjab for the exercise of its revisional jurisdiction under s 622 of the Code of Civil Procedure (Act XIV of 1882), see the Panjab Courts Act (XVIII of 1884), s 72, as amended by the Panjab Courts Act (XXV of 1899).

† As to application for review of judgment, see the Code of Civil Procedure (Act XIV of 1882), s 623.

‡ See Sch I, Nos 4 and 5, *infra*

§ The word "application" has been substituted for the original words, "plaint or memorandum of appeal," by the Court Fees Act Amendment Act (XX. of 1870), s. 1.

A contracts in consideration of Rs. 1,000 to bequeath certain of his lands to B. Immediately after the contract A dies intestate, and C takes out administration to his estate. B may enforce specific performance of the contract against C.

A contracts to sell certain land to B. Before the completion of the contract A becomes a lunatic, and C is appointed his committee. B may specifically enforce the contract against C.

to clause c.—A, the tenant for life of an estate, with remainder to B, in due exercise of a power conferred by the settlement under which he is tenant for life, contracts to sell the estate to C, who has notice of the settlement. Before the sale is completed A dies. C may enforce specific performance of the contract against B.

A and B are joint tenants of land, his undivided moiety of which either may alien in his lifetime, but which, subject to that right, devolves on the survivor. A contracts to sell his moiety to C, and dies. C may enforce specific performance of the contract against B.

(h) Against whom Contracts cannot be specifically enforced.

28. Specific performance of a contract cannot be enforced

What parties cannot be against a party thereto in any of the compelled to perform. following cases:—

(a) if the consideration to be received by him is so grossly inadequate with reference to the state of things existing at the date of the contract as to be, either by itself or coupled with other circumstances, evidence of fraud, or of undue advantage taken by the plaintiff;

(b) if his assent was obtained by the misrepresentation (whether wilful or innocent), concealment, circumvention, or unfair practices of any party to whom performance would become due under the contract, or by any promise of such party which has not been substantially fulfilled;

(c) if his assent was given under the influence of mistake of fact, misapprehension, or surprise: provided that, when the contract provides for compensation in case of mistake, compensation may be made for a mistake within the scope of such provision, and the contract may be specifically enforced in other respects if proper to be so enforced.

Illustrations.

to clause c.—A, one of two executors, in the erroneous belief that he had the authority of his co-executor, enters into an agreement for the sale to B of his testator's property. B cannot insist on the sale being completed.

- vii. Plaints in suits before Collectors under Madras Regulation XII. of 1816.
- viii. Probate of a will, letters of administration, "and save, as regards debts and securities, a certificate under Bombay Regulation VIII. of 1827,"* where the amount or value of the property in respect of which the probate or letters or certificate shall be granted does not exceed one thousand rupees.
- ix. Application or petition to a Collector or other officer making a settlement of land-revenue or to a Board of Revenue, or a Commissioner of Revenue, relating to matters connected with the assessment of land or the ascertainment of rights thereto or interests therein, if presented previous to the final confirmation of such settlement.
- x. Application relating to a supply for irrigation of water belonging to Government.
- xi. Application for leave to extend cultivation, or to relinquish land, when presented to an officer of land-revenue by a person holding, under direct engagement with Government, land of which the revenue is settled, but not permanently.
- xii. Application for service of notice of relinquishment of land, or of enhancement of rent.
- xiii. Written authority to an agent to distrain
- xiv. First application (other than a petition containing a criminal charge or information) for the summons of a witness or other person to attend, either to give evidence or to produce a document, or in respect of the production or filing of an exhibit not being an affidavit made for the immediate purpose of being produced in Court.
- xv. Bail-bonds in criminal cases, recognizances to prosecute or give evidence, and recognizances for personal appearance or otherwise.

* The words quoted have been substituted for the words "and certificate mentioned in the First Schedule to this Act annexed, No. 12," by the Succession Certificate Act (VII. of 1839), s. 13 (2)

(b) By a marriage-settlement, A, the father of B, the intended wife, covenants with C, the intended husband, to pay to C, his executors, administrators, and assigns, during A's life, an annuity of Rs. 5,000. C dies insolvent, and the official assignee claims the annuity from A. The Court, on finding it clearly proved that the parties always intended that this annuity should be paid as a provision for B and her children, may rectify the settlement, and decree that the assignee has no right to any part of the annuity.

32. For the purpose of rectifying a contract in writing, the Presumption as to intent Court must be satisfied that all the parties thereto intended to make an equitable and conscientious agreement.

33. In rectifying a written instrument, the Court may inquire what the instrument was intended to mean, and what were intended to be its legal consequences, and is not confined to the inquiry what the language of the instrument was intended to be.

34. A contract in writing may be first rectified, and then, Specific enforcement of if the plaintiff has so prayed in his rectified contract. plaint, and the Court thinks fit, specifically enforced.

Illustration.

A contracts in writing to pay his attorney, B, a fixed sum in lieu of costs. The contract contains mistakes, as to the name and rights of the client, which, if construed strictly, would exclude B from all rights under it. B is entitled, if the Court thinks fit, to have it rectified, and to an order for payment of the sum, as if at the time of its execution it had expressed the intention of the parties.

CHAPTER IV.

OF THE RESCISSION OF CONTRACTS.

35.* Any person interested in a contract in writing may sue When rescission may be to have it rescinded, and such rescission adjudged. may be adjudged by the Court in any of the following cases, namely:—

(a) where the contract is voidable or terminable by the plaintiff;

* In ss. 35 and 36 the words "in writing" have been repealed by the Transfer of Property Act (IV. of 1882) in territories in which this Act is in force.—See Act IV. of 1882, ss. 1 and 2.

CHAPTER IIIA.*

PROBATES, LETTERS OF ADMINISTRATION, AND CERTIFICATES OF ADMINISTRATION.

19A. Where any person, on applying for the probate of a will or letters of administration, has estimated the property of the deceased to be of greater value than the same has afterwards proved to be, and has consequently paid too high a court-fee thereon, if, within six months after the true value of the property has been ascertained, such person produces the probate or letters to the Chief Controlling Revenue Authority "for the local area"† in which the probate or letters has or have been granted,

and delivers to such Authority a particular inventory and valuation of the property of the deceased, verified by affidavit or affirmation,

and, if such Authority is satisfied that a greater fee was paid on the probate or letters than the law required, the said Authority may—

(a) cancel the stamp on the probate or letters if such stamp has not been already cancelled;

(b) substitute another stamp for denoting the court-fee which should have been paid thereon; and

(c) make an allowance for the difference between them as in the case of spoiled stamps, or repay the same in money, at his discretion.

19B. Whenever it is proved to the satisfaction of such Authority that an executor or administrator has paid debts due from the deceased to such an amount as, being deducted out of the amount or value of the estate, reduces the same to a sum which, if it had been the whole gross amount or value of the estate, would have occasioned a less court-fee to be paid on the probate or letters of administration granted in respect of such estate than has been actually paid thereon under this Act,

* This chapter has been inserted by the Probate and Administration Act (XII of 1875), s 6

† The words quoted have been substituted for the words "of the province" by the Court Fees (Amendment) Act (X. of 1901)

38. On adjudging the rescission of a contract, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

CHAPTER V.

OF THE CANCELLATION OF INSTRUMENTS.

39. Any person against whom a written instrument is void or voidable, who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, may sue to have it adjudged void or voidable, and the Court may, in its discretion, so adjudge it, and order it to be delivered up and cancelled.

If the instrument has been registered under the Indian Registration Act, 1887,* the Court shall also send a copy of its decree to the officer in whose office the instrument has been so registered, and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.

Illustrations.

(a.) A, the owner of a ship, by fraudulently representing her to be seaworthy, induces B, an underwriter, to insure her. B may obtain the cancellation of the policy.

(b) A conveys land to B, who bequeaths it to C, and dies Thereupon D gets possession of the land, and produces a forged instrument, stating that the conveyance was made to B in trust for him. C may obtain the cancellation of the forged instrument.

(c) A, representing that the tenants on his land were all at will, sells it to B, and conveys it to him by an instrument dated the 1st January 1877. Soon after that day, A fraudulently grants to C a lease of part of the lands, dated the 1st October 1876, and procures the lease to be registered under the Indian Registration Act, 1887.* B may obtain the cancellation of this lease.

(d) A agrees to sell and deliver a ship to B, to be paid for by B's acceptances of four bills of exchange, for sums amounting to Rs. 30,000, to be drawn by A on B The bills are drawn and accepted, but the ship is not delivered according to the agreement A sues B on one of the bills. B may obtain the cancellation of all the bills.

* The reference to Act VIII. of 1871 has been altered in accordance with Act III. of 1877, s. 2.

be, and has in consequence paid too low a court-fee thereon, the Chief Controlling Revenue Authority "for the local area"* in which the probate or letters has or have been granted may, on the value of the estate of the deceased being verified by affidavit or affirmation, cause the probate or letters of administration to be duly stamped on payment of the full court-fee which ought to have been originally paid thereon in respect of such value, and of the further penalty, if the probate or letters is or are produced within one year from the date of the grant, of five times, or, if it or they is or are produced after one year from such date, of twenty times, such proper court fee without any deduction of the court-fee originally paid on such probate or letters:

Provided that, if the application be made within six months after the ascertainment of the true value of the estate and the discovery that too low a court-fee was at first paid on the probate or letters, and if the said Authority is satisfied that such fee was paid in consequence of a mistake, or of its not being known at the time that some particular part of the estate belonged to the deceased, and without any intention of fraud or to delay the payment of the proper court-fee, the said Authority may remit the said penalty, and cause the probate or letters to be duly stamped on payment only of the sum wanting to make up the fee which should have been at first paid thereon.

19F. In the case of letters of administration on which too low a court-fee has been paid at first, the said Authority shall not cause the same to be duly stamped in manner aforesaid until the administrator has given such security to the Court by which the letters of administration have been granted as ought by a law to have been given on the granting thereof in case the full value of the estate of the deceased had been then ascertained.

19G.† Where too low a court-fee has been paid on any probate or letters of administration in consequence of any mistake, or of its not being known at the time that some particular part of the estate belonged to the deceased, if any executor or administrator acting under such

* The words quoted have been substituted for the words "of the province" by the Court Fees (Amendment) Act (X. of 1901)

† As to recovery of penalties or forfeitures under s 19G, see the Probate and Administration Act (VI. of 1889), s. 20 (1)

SPECIFIC RELIEF.

of 1877.]

(b) A bequeaths his property to B, C, and D, 'to be equally divided amongst all and each of them, if living at the time of my death, then amongst their surviving children' No such children are in existence. In a suit against A's executor, the Court may declare whether B, C, and D took the property absolutely, or only for their lives, and it may also declare the interests of the children before their rights are vested.

(c) A covenants that, if he should at any time be entitled to property exceeding one lakh of rupees, he will settle it upon certain trusts. Before any such property accrues, or any persons entitled under the trusts are ascertained, he institutes a suit to obtain a declaration that the covenant is void for uncertainty. The Court may make the declaration.

(d) A alienates to B property in which A has merely a life-interest. The alienation is invalid as against C, who is entitled as reversioner. The Court may, in a suit by C against A and B, declare that C is so entitled.

(e) The widow of a sonless Hindu alienates part of the property of which she is in possession as such. The person presumptively entitled to possess the property if he survive her may, in a suit against the alienee, obtain a declaration that the alienation was made without legal necessity, and was therefore void beyond the widow's lifetime.

(f) A Hindu widow in possession of property adopts a son to her deceased husband. The person presumptively entitled to possession of the property on her death without a son may, in a suit against the adopted son, obtain a declaration that the adoption was invalid.

(g) A is in possession of certain property. B, alleging that he is the owner of the property, requires A to deliver it to him. A may obtain a declaration of his right to hold the property.

(h) A bequeaths property to B for his life, with remainder to B's wife and her children (if any) by B, but if B die without any wife or children to C. B has a putative wife, D, and children, but C denies that B and D were ever lawfully married. D and her children may, in B's lifetime, institute a suit against C, and obtain therein a declaration that they are truly the wife and children of B.

43. A declaration made under this chapter is binding only on the parties to the suit, persons claiming through them respectively, and, where any of the parties are trustees, on the persons for whom, if in existence at the date of the declaration, such parties would be trustees.

Illustration.

A, a Hindu, in a suit to which B, his alleged wife, and her mother, are defendants, seeks a declaration that his marriage was duly solemnized, and an order for the restitution of his conjugal rights. The Court makes the declaration and order. C, claiming that B is his wife, then sues A for the recovery of B. The declaration made in the former suit is not binding upon C.

before which the application for probate or letters of administration was made to hold an inquiry into the true value of the property :

Provided that no such motion shall be made after the expiration of six months from the date of the exhibition of the inventory required by section 277 of the Indian Succession Act, 1865,* or, as the case may be, by section 98 of the Probate and Administration Act, 1881.†

(5) The Court, when so moved as aforesaid, shall hold, or cause to be held, an inquiry accordingly, and shall record a finding as to the true value, as near as may be, at which the property of the deceased should have been estimated. The Collector shall be deemed to be a party to the inquiry.

(6) For the purposes of any such inquiry, the Court or person authorized by the Court to hold the inquiry may examine the petitioner for probate or letters of administration on oath (whether in person or by commission), and may take such further evidence as may be produced to prove the true value of the property. The person authorized as aforesaid to hold the inquiry shall return to the Court the evidence taken by him, and report the result of the inquiry, and such report and the evidence so taken shall be evidence in the proceeding, and the Court may record a finding in accordance with the report, unless it is satisfied that it is erroneous.

(7) The finding of the Court recorded under sub-section (5) shall be final, but shall not bar the entertainment and disposal by the Chief Controlling Revenue Authority of any application under section 19E.

(8) The Local Government may make rules for the guidance of Collectors in the exercise of the powers conferred by sub-section (3).

19I ‡ (1) No order entitling the petitioner to the grant of

Payment of court-fees in respect of probates and letters of administration.

probate or letters of administration shall be made upon an application for such grant until the petitioner has filed in the Court a valuation of the property in the form set forth in the Third Schedule, and the Court is satisfied that the fee mentioned in No. 11 of the First Schedule has been paid on such valuation.

* Act X of 1865.

† Act V of 1881.

‡ See foot-note † at p. 25

(f) to make any order binding on the Secretary of State for India in Council, on the Governor-General in Council, on the Governor of Madras in Council, on the Governor of Bombay in Council, or on the Lieutenant-Governor of Bengal;

(g) to make any order on any other servant of the Crown as such, merely to enforce the satisfaction of a claim upon the Crown; or

(h) to make any order which is otherwise expressly excluded by any law for the time being in force.

46. Every application under section 45 must be founded on an affidavit of the person injured, stating his right in the matter in question, his demand of justice, and the denial thereof; and the High Court may, in its discretion, make the order applied for absolute in the first instance, or refuse it, or grant a rule to show cause why the order applied for should not be made.

Application how made.

Procedure thereon.

If in the last case the person, Court, or corporation complained of, shows no sufficient cause, the High Court may first make an order in the alternative, either to do or forbear the act mentioned in the order, or to signify some reason to the contrary, and make an answer thereto by such day as the High Court fixes in this behalf.

Order in alternative.

47. If the person, Court, or corporation, to whom or to which such order is directed, makes no answer, or makes an insufficient or a false answer, the High Court may then issue a peremptory order to do or forbear the act absolutely.

Peremptory order.

48. Every order under this chapter shall be executed, and may be appealed from, as if it were a decree made in the exercise of the ordinary original civil jurisdiction of the High Court.

Execution of, and appeal from, orders

49. The costs of all applications and orders under this chapter shall be in the discretion of the High Court.

Costs.

Bar to issue of *mandamus*.

50. Neither the High Court nor any Judge thereof shall hereafter issue any writ of *mandamus*.

i. the fees chargeable for serving and executing processes issued by such Court in its appellate jurisdiction, and by the other Civil "and Revenue"* Courts established within the local limits of such jurisdiction ;

ii. the fees chargeable for serving and executing processes issued by the Criminal Courts established within such limits in the case of offences other than offences for which police-officers may arrest without a warrant ; and

iii. the remuneration of the peons and all other persons employed by leave of a Court in the service or execution of processes.

The High Court may, from time to time, alter and add to the rules so made.

All such rules, alterations, and additions shall, after being Confirmation and publica- confirmed by the Local Government, tion of rules. and sanctioned by the Governor-General of India in Council, be published in the local official Gazette, and shall thereupon have the force of law.

Until such rules shall be so made and published, the fees now leviable for serving and executing processes shall continue to be levied, and shall be deemed to be fees leviable under this Act.

21. A table in the English and Vernacular languages, showing the fee chargeable for such service and execution, shall be exposed to view in a conspicuous part of each Court.

^A For notifications issued under the powers conferred by this section in—

(1) Bombay, *see* Bombay List of Local Rules and Orders, Vol. I., Ed 1896, pp 36 and 37 ,

(2) Burma, *see* *Burma Gazette*, 1891, Pt I, p 14 ;

(3) Madras, *see* Madras List of Local Rules and Orders, Vol I., Ed 1898, pp 18 and 19 ,

(4) North-Western Provinces and Oudh, *see* North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, P 33 ,

(5) Central Provinces, *see* Central Provinces List of Local Rules and Orders, Ed 1896, p. 11.

* In Punjab the words quoted in s 20, cl. i, has been repealed by the Punjab Land Revenue Act (XVII. of 1887)

When such obligation arises from contract, the Court shall be guided by the rules and provisions contained in Chapter II. of this Act.

When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the Court may grant a perpetual injunction in the following cases (namely):—

- (a) where the defendant is trustee of the property for the plaintiff;
- (b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;
- (c) where the invasion is such that pecuniary compensation would not afford adequate relief;
- (d) where it is probable that pecuniary compensation cannot be got for the invasion;
- (e) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

Explanation.—For the purpose of this section trade-mark is property.

Illustrations.

(a) A lets certain land to B, and B contracts not to dig sand or gravel thereout. A may sue for an injunction to restrain B from digging in violation of his contract.

(b) A trustee threatens a breach of trust. His co-trustees (if any) should, and the beneficial owners may, sue for an injunction to prevent the breach.

(c) The directors of a public company are about to pay a dividend out of capital or borrowed money. Any of the shareholders may sue for an injunction to restrain them.

(d) The directors of a fire and life insurance company are about to engage in marine insurances. Any of the shareholders may sue for an injunction to restrain them.

(e) A, an executor, through misconduct or insolvency, is bringing the property of the deceased into danger. The Court may grant an injunction to restrain him from getting in the assets.

(f) A, a trustee for B, is about to make an imprudent sale of a small part of the trust-property. B may sue for an injunction to restrain the sale, even though compensation in money would have afforded him adequate relief.

(g) A makes a settlement (not founded on marriage or other valuable consideration) of an estate on B and his children. A then contracts to sell

24. [*Repealed by the Repealing and Amending (Act XII. of 1891).*]

CHAPTER V.

OF THE MODE OF LEVYING FEES.

Collection of fees by stamps.

25. All fees referred to in section 3, or chargeable under this Act, shall be collected by stamps.

26. The stamps used to denote any fee chargeable under this Act shall be impressed or adhesive, or partly impressed and partly adhesive, as the Governor-General of India in Council may, by notification in the *Gazette of India*, from time to time direct.*

Rules for supply, number, renewal, and keeping of accounts of stamps.

27. The Local Government may, from time to time, make rules for regulating—

- (a) the supply of stamps to be used under this Act,
- (b) the number of stamps to be used for denoting any fee chargeable under this Act,
- (c) the renewal of damaged or spoiled stamps, and
- (d) the keeping of accounts of all stamps used under this Act:

Provided that, in the case of stamps used under section 3 in a High Court, such rules shall be made with the concurrence of the Chief Justice of such Court.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

28. No document which ought to bear a stamp under this Act shall be of any validity unless and until it is properly stamped.

But, if any such document is, through mistake or inadvertence, received, filed, or used in any Court or office without being properly stamped, the presiding Judge or the head of the office, as

* For rules as to levy of court-fees by adhesive and impressed stamps, see *Gazette of India*, 1883, Pt. I, p. 189

threatens to remove certain pillars which help to support B's mine. B may sue for an injunction to restrain him from so doing

(s) A rings bells or makes some other unnecessary noise so near a house as to interfere materially and unreasonably with the physical comfort of the occupier, B. B may sue for an injunction restraining A from making the noise.

(t) A pollutes the air with smoke so as to interfere materially with the physical comfort of B and C, who carry on business in a neighbouring house. B and C, may sue for an injunction to restrain the pollution.

(u) A infringes B's patent. If the Court is satisfied that the patent is valid, and has been infringed, B may obtain an injunction to restrain the infringement.

(v) A pirates B's copyright. B may obtain an injunction to restrain the piracy, unless the work of which copyright is claimed is libellous or obscene.

(w) A improperly uses the trade-mark of B. B may obtain an injunction to restrain the user, provided that B's use of the trade-mark is honest.

(x) A, a tradesman, holds out B as his partner against the wish and without the authority of B. B may sue for an injunction to restrain A from so doing.

(y) A, a very eminent man, writes letters on family-topics to B. After the death of A and B C, who is B's residuary legatee, proposes to make money by publishing A's letters. D, who is A's executor, has a property in the letters, and may sue for an injunction to restrain B from publishing them.

(z) A carries on a manufactory, and B is his assistant. In the course of his business, A imparts to B a secret process of value. B afterwards demands money of A, threatening, in case of refusal, to disclose that process to C, a rival manufacturer. A may sue for an injunction to restrain B from disclosing the process.

55. When, to prevent the breach of an obligation, it is neces-

Mandatory injunctions. sary to compel the performance of certain acts which the Court is capable of enforcing, the Court may, in its discretion, grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.

Illustrations.

(a) A, by new buildings, obstructs lights, to the access and use of which B has acquired a right under the Indian Limitation Act, 1877, Part IV.* B may obtain an injunction, not only to restrain A from going on with the buildings, but also to pull down so much of them as obstructs B's lights.

* The reference to Act IX. of 1871 has been altered in accordance with Act XV. of 1877, s. 2.

iv. All fees ordered to be repaid under this section may be recovered as if they were fines imposed by the Court.

32. [*Repealed by the Repealing and Amending Act (XII. of 1891).*]

33. Whenever the filing or exhibition in a Criminal Court of a document in respect of which the proper fee has not been paid is, in the opinion of the presiding Judge, necessary to prevent a failure of justice, nothing contained in section 4 or section 6 shall be deemed to prohibit such filing or exhibition.

34.* (1) The Local Government may, from time to time, make rules for regulating the sale of stamps to be used under this Act, the persons by whom alone such sale is to be conducted, and the duties and remuneration of such persons.

(2) All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

(3) Any person appointed to sell stamps who disobeys any rule made under this section, and any person not so appointed who sells or offers for sale any stamp, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

35. The Governor-General of India in Council may, from time to time, by notification† in the *Gazette of India*, reduce or remit, in the whole or in any part of British India, all or any of the fees mentioned in the first and second schedules to this Act annexed, and may, in like manner, cancel or vary such order.

36. Nothing in Chapters II. and V. of this Act applies to the commission payable to the Accountant-General of the High Court at Fort William, or to the fees which any officer of a High Court is allowed to receive in addition to a fixed salary.

* S 34 has been substituted for the original by the Repealing and Amending Act (XII of 1891)

† For Notification No 4550 dated September 10, 1889 as amended and added to by subsequent Notifications, see Appendix

(j) when the conduct of the applicant or his agents has been such as to disentitle him to the assistance of the Court,

(k) where the applicant has no personal interest in the matter.

Illustrations

(a.) A seeks an injunction to restrain his partner, B, from receiving the partnership debts and effects. It appears that A had improperly possessed himself of the books of the firm, and refused B access to them. The Court will refuse the injunction.

(b.) A manufactures and sells crucibles, designating them as "patent plumbago crucibles," though, in fact, they have never been patented. B pirates the designation. A cannot obtain an injunction to restrain the piracy.

(c.) A sells an article called "Mexican Balm," stating that it is compounded of divers rare essences, and has sovereign medicinal qualities. B commences to sell a similar article, to which he gives a name and description such as to lead people into the belief that they are buying A's Mexican balm. A sues B for an injunction to restrain the sale. B shows that A's Mexican balm consists of nothing but scented hogs' lard. A's use of his description is not an honest one, and he cannot obtain an injunction.

57. Notwithstanding section 56, clause f, where a contract Injunction to perform comprises an affirmative agreement to do negative agreement. a certain act, coupled with a negative agreement, express or implied, not to do a certain act, the circumstance that the Court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement: provided that the applicant has not failed to perform the contract so far as it is binding on him.

Illustrations

(a.) A contracts to sell to B for Rs. 1,000 the good-will of a certain business unconnected with business-premises, and further agrees not to carry on that business in Calcutta. B pays A the Rs 1,000, but A carries on the business in Calcutta. The Court cannot compel A to send his customers to B, but B may obtain an injunction restraining A from carrying on the business in Calcutta.

(b.) A contracts to sell to B the good-will of a business. A then sets up a similar business close by B's shop, and solicits his old customers to deal with him. This is contrary to his implied contract, and B may obtain an injunction to restrain A from soliciting customers, and from doing any act whereby their good-will may be withdrawn from B.

(c.) A contracts with B to sing for twelve months at B's theatre, and not to sing in public elsewhere. B cannot obtain specific performance of

SCHEDULE I.—(continued).

Ad-valorem Fees—(continued).

NUMBER		PROPER FEE
1. <i>Plaint, written statement pleading a set-off or counter-claim, or memorandum of appeal (not otherwise provided for in this Act), or of cross-objection, presented to any Civil or Revenue Court, except those mentioned in section 3—(contd.)</i>	When such amount or value exceeds ten thousand rupees, for every five hundred rupees or part thereof in excess of ten thousand rupees, up to twenty thousand rupees ..	Fifteen rupees
	When such amount or value exceeds twenty thousand rupees, for every one thousand rupees or part thereof in excess of twenty thousand rupees, up to thirty thousand rupees	Twenty rupees
	When such amount or value exceeds thirty thousand rupees, for every two thousand rupees or part thereof in excess of thirty thousand rupees, up to fifty thousand rupees . ..	Twenty rupees
	When such amount or value exceeds fifty thousand rupees, for every five thousand rupees or part thereof in excess of fifty thousand rupees	Twenty-five rupees
	Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be three thousand rupees	

ACT NO. II. OF 1899.

The Indian Stamp Act, 1899.

[As amended up to June 1907.]

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Act II., 1899.—1.

SCHEDULE I.—(continued).

Ad-volorem Fees—(continued).

NUMBER	PROPER FEE.
6. Copy or translation of a judgment or order not being, or having the force of, a decree— <i>(cid)</i> .	<p>(a)—If the amount or value of the subject-matter is fifty or less than fifty rupees ... Four annas</p> <p>(b.)—If such amount or value exceeds fifty rupees .. Eight annas</p> <p>When such judgment or order is passed by a High Court .. One rupee</p>
7. Copy of a decree or order having the force of a decree	<p>When such decree or order is made by any Civil Court other than a High Court, or by any Revenue Court—</p> <p>(a.)—If the amount or value of the subject-matter of the suit wherein such decree or order is made is fifty or less than fifty rupees . Eight annas</p> <p>(b) If such amount or value exceeds fifty rupees ... One rupee.</p> <p>When such decree or order is made by a High Court .. Four rupees</p>

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Ad-volorem Fees—(continued)

NUMBER.		PROPER FEE.
<p>11.* Probate of a will or letters of administration with or without will annexed</p>	<p>{ If the amount or value of the property in respect of which the grant of probate or letters is made exceeds one thousand rupees.</p>	<p>Two per centum on such amount or value provided that, when, after the grant of a certificate under the Succession Certificate Act, 1889, or any enactment repealed by that Act, or under the Regulation of the Bombay Code, No VIII of 1827, in respect of any property included in an estate, a grant of probate or letters of administration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant.</p>

* Nos 11, 12, and 12A have been substituted, by the Succession Certificate Act (VII. of 1889), s 13 (1), for Nos. 11 and 12 as originally enacted.

(2) "**Bill of exchange**" means a bill of exchange as defined by the *Negotiable Instruments Act, 1881*,* and includes also a hundi and any other document entitling or purporting to entitle any person, whether named therein or not, to payment by any other person of, or to draw upon any other person for, any sum of money :

In the old Act the definition of "bill of exchange" was merely this :
 "'Bill of exchange' includes a hundi."

(3) "**Bill of exchange payable on demand**" includes—

- (a) an order for the payment of any sum of money by a bill of exchange or promissory note, or for the delivery of any bill of exchange or promissory note in satisfaction of any sum of money, or for the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen ;
- (b) an order for the payment of any sum of money weekly, monthly, or at any other stated periods ; and
- (c) a letter of credit, that is to say, any instrument by which one person authorizes another to give credit to the person in whose favour it is drawn :

(4) "**Bill of lading**" includes a "through bill of lading," but does not include a mate's receipt :

In the old Act, the definition of "bill of lading" was as follows :
 "'Bill of lading' means any instrument signed by the owner of a vessel or his agent, acknowledging the receipt of goods therein described, and undertaking to deliver the same at a place and to a person therein mentioned or indicated."

(5) "**Bond**" includes—

- (a) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be ;
- (b) any instrument attested by a witness, and not payable to order or bearer, whereby a person obliges himself to pay money to another ; and
- (c) any instrument so attested, whereby a person obliges himself to deliver grain or other agricultural produce to another :

* Act XXVI. of 1881.

SCHEDULE I.—(continued).

Ad-valorem Fees—(continued).

NUMBER		PROPER FEE.
<p>12* Certificate under the Succession Certificate Act, 1889—(contd.).</p>	<p>... ..</p>	<p>(2) Whether or not any power with respect to a security specified in a certificate has been conferred under the Act, and where such a power has been so conferred, whether the power is for the receiving of interest or dividends on, or for the negotiation or transfer of, the security, or for both purposes, the value of the security is its market-value on the day on which the inclusion of the security in the certificate is applied for, so far as such value can be ascertained.</p>

* Nos 11, 12, and 12A have been substituted, by the Succession Certificate Act (VII of 1889), s. 13 (1), for Nos. 11 and 12 as originally enacted

In cl. (b), after the words, "appoint in this behalf," the words "by name or in virtue of his office," have been omitted.

(10) "**Conveyance**" *includes a conveyance on sale and every instrument by which property, whether moveable or immoveable, is transferred inter vivos, and which is not otherwise specifically provided for by Schedule I.*

The old definition of "conveyance" was as follows "(9) 'Conveyance means any instrument by which property (whether moveable or immoveable) is transferred on sale.'"

(11) "**Duly stamped**," as applied to an instrument, means *that the instrument bears an adhesive or impressed stamp of not less than the proper amount, and that such stamp has been affixed or used in accordance with the law for the time being in force in British India :*

In the old Act, the definition of "duly stamped" was as follows "(10) 'Duly stamped,' as applied to an instrument, means stamped, or written upon paper bearing an impressed stamp, in accordance with the law in force in British India when such instrument was executed or first executed."

(12) "**Executed**" and "**execution**" used with reference to instruments, mean "*signed*" and "*signature* :"

(13) "**Impressed stamp**" includes—

- (a) *labels affixed and impressed by the proper officer, and*
- (b) *stamps embossed and engraved on stamped paper.*

(14) "**Instrument**" *includes every document by which any right or liability is or purports to be created, transferred, limited, extended, extinguished or recorded*

(15) "**Instrument of partition**" means any instrument whereby co-owners of any property divide or agree to divide such property in severalty, and includes also a final order for effecting a partition passed by any Revenue-authority or any Civil Court and an award by an arbitrator directing a partition .

The italicized words in the above definition are new.

(16) "**Lease**" means a lease of immoveable property, and includes also—

- (a) a patta ;
- (b) a kabuliyat or other undertaking in writing, not being a counterpart of a lease, to cultivate, occupy, or pay or deliver rent for, immoveable property ;

SCHEDULE I.—(continued).

Ad-valorem Fees—(continued).

NUMBER.		PROPER FEE
13 * Application to the Chief Court in the Punjab for the exercise of its jurisdiction under section 70 of the Punjab Courts Act, 1884, as amended by the Punjab Courts Act, 1899, or to the Court of the Financial Commissioner of the Punjab for the exercise of its revisional jurisdiction under section 84 of the Punjab Tenancy Act, 1887	<p>When the amount or value of the subject-matter in dispute does not exceed twenty-five rupees ...</p> <p>When such amount or value exceeds twenty-five rupees ...</p>	<p>Two rupees.</p> <p>The fee leviable on a memorandum of appeal</p>
14 † Application to the Chief Court of Lower Burma for the exercise of its revisional jurisdiction under section 622 of the Code of Civil Procedure or section 25 of the Provincial Small Cause Courts Act, 1887.	<p>When the amount or value of the subject-matter in dispute does not exceed twenty-five rupees ...</p> <p>When such amount or value exceeds twenty-five rupees ...</p>	<p>Two rupees.</p> <p>The fee leviable on a memorandum of appeal</p>

* This number has been added by the Punjab Courts Act (XVIII. of 1884), s 71, as amended by the Punjab Courts Act (XXV of 1899), s. 6, except the italicized words, which have been added by Act IX of 1900.

† The words and figures in the first column of No 14 have been substituted for those inserted by the Lower Burma Courts Act (XI of 1889), s 84.—See the Lower Burma Courts Act (VI of 1900), Sch I, Pt I.

- (b) includes any insurance of goods, merchandise or property for any transit which includes, not only a sea-risk *within the meaning of clause (a)*, but also any other risk incidental to the transit insured from the commencement of the transit to the ultimate destination covered by the insurance :

Where any person, in consideration of any sum of money paid or to be paid for additional freight or otherwise, agrees to take upon himself any risk attending goods, merchandise, or property of any description whatever while on board of any ship or vessel, or engages to indemnify the owner of any such goods, merchandise, or property from any risk, loss, or damage, such agreement or engagement shall be deemed to be a contract for sea-insurance :

In the former Act the definition of "policy of sea-insurance" was included in the definition of "policy of insurance," and was immediately after sub-clause (c) of the present cl (19), and ran thus: "... It (*i.e.*, policy of insurance) includes also a policy of sea-insurance, such a policy (*a*) meaning any insurance made upon any ship or vessel," &c The rest of the words are in sub-clauses (a) and (b), and in the last para. of cl. (20), except the italicized words, which are new.

(21) "Power-of-attorney" *includes* any instrument (not chargeable with a fee under the law* relating to court-fees for the time being in force) empowering a specified person to act *for*, and in the *name* of, the person executing it :

In the definition of "power-of-attorney," the italicized word *includes* has been substituted for the word "means;" the italicized words *for*, and, after "act," are new, and the italicized word *name* has been substituted for "stead"

(22) "Promissory note" *means a promissory note as defined by the Negotiable Instruments Act 1881;*†

it also includes a note promising the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen :

(23) "Receipt" *includes* any note, memorandum or writing—

- (a) whereby any money, or any bill of exchange, cheque, or promissory note is acknowledged to have been received, or

* Act VII of 1870.

† Act XXVI. of 1881.

SCHEDULE I—(continued).

Table of Rates of Ad-valorem Fees leviable on the Institution of Suits.

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.
Rs	Rs	Rs A. P.
0	5	0 6 0
5	10	0 12 0
10	15	1 2 0
15	20	1 8 0
20	25	1 14 0
25	30	2 4 0
30	35	2 10 0
35	40	3 0 0
40	45	3 6 0
45	50	3 12 0
50	55	4 2 0
55	60	4 8 0
60	65	4 14 0
65	70	5 4 0
70	75	5 10 0
75	80	6 0 0
80	85	6 6 0
85	90	6 12 0
90	95	7 2 0
95	100	7 8 0
100	110	8 4 0
110	120	9 0 0
120	130	9 12 0
130	140	10 6 0
140	150	11 4 0
150	160	12 0 0
160	170	12 12 0
170	180	13 6 0
180	190	14 4 0
190	200	15 0 0
200	210	15 12 0
210	220	16 6 0
220	230	17 4 0

duty of the amount indicated in *that* schedule as the proper duty therefor respectively, that is to say—

- (a) Every instrument mentioned in that schedule which, not having been previously executed by any person, is executed in British India on or after the first day of *July, 1899*;
- (b) every bill of exchange, cheque, or promissory note drawn or made out of British India on or after that day, and accepted or paid, or presented for acceptance or payment, or endorsed, transferred, or otherwise negotiated, in British India; and
- (c) every instrument (other than a bill of exchange, cheque, or promissory note) mentioned in that schedule, which, not having been previously executed by any person, is executed out of British India on or after that day, relates to any property situate, or to any matter or thing done or to be done, in British India, and is received in British India :

Provided that no duty shall be chargeable in respect of—

(1) any instrument executed by, or on behalf of, or in favour of, Government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument ;

(2) any instrument for the sale, transfer, or other disposition, either absolutely or by way of mortgage or otherwise, of any ship or vessel, or any part-interest, share, or property of, or in any ship or vessel registered under the *Merchant Shipping Act, 1894,** or under *Act XIX. of 1838, or the Indian Registration of Ships Act, 1841,†* as amended by subsequent Acts.

4. (1) Where, in the case of any sale, mortgage, or settlement,

Several instruments used in single transaction of sale, mortgage, or settlement. several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed in Schedule I., for the conveyance, mortgage, or settlement, and each of the other instruments shall be chargeable with a duty of one rupee instead of the duty (if any) prescribed for it in that schedule.

* 57 & 58 Vict., c. 60.

† Act X. of 1841.

SCHEDULE I —(continued).

Table of Rates of *Ad-valorem Fees*, &c.—(continued).

When the amount or value of the subject- matter exceeds	But does not exceed	Proper Fee
Rs	Rs	Rs A P
570	580	43 8 0
580	590	44 4 0
590	600	45 0 0
600	610	45 12 0
610	620	46 8 0
620	630	47 4 0
630	640	48 0 0
640	650	48 12 0
650	660	49 8 0
660	670	50 4 0
670	680	51 0 0
680	690	51 12 0
690	700	52 8 0
700	710	53 4 0
710	720	54 0 0
720	730	54 12 0
730	740	55 8 0
740	750	56 4 0
750	760	57 0 0
760	770	57 12 0
770	780	58 8 0
780	790	59 4 0
790	800	60 0 0
800	810	60 12 0
810	820	61 8 0
820	830	62 4 0
830	840	63 0 0
840	850	63 12 0
850	860	64 8 0
860	870	65 4 0
870	880	65 12 0
880	890	66 8 0
890	900	67 4 0

(4) Where any sea-insurance is made for or upon a voyage, and also for time, or to extend to or cover any time beyond thirty days after the ship shall have arrived at her destination and been there moored at anchor, the policy shall be charged with duty as a policy for or upon a voyage, and also with duty as a policy for time.

In s. 7, the italicized figures 506 have been substituted for the figures "55," the words and figures, "Merchant Shipping Act, 1892," have been substituted for the words and figures, "Merchant Shipping Act Amendment Act, 1862," and the word *sea-policy*, has throughout been substituted for the words, "policy of sea-insurance."

8. (1) Notwithstanding anything in this Act, any local authority raising a loan under the provisions of the Local Authorities' Loans Act, 1879,* or of any other law for the time being in force, by the issue of bonds, debentures, or other *securities*, shall, in respect of such loan, be chargeable with a duty of eight annas per centum on the total amount of the bonds, debentures, or other *securities* issued by it, and such bonds, debentures, or other *securities* need not be stamped, and shall not be chargeable with any further duty on renewal, consolidation, subdivision, or otherwise.

(2) The provisions of section (1) exempting certain bonds, debentures, or other *securities* from being stamped and from being chargeable with certain further duty shall apply to the bonds, debentures, or other *securities* of all outstanding loans of the kind mentioned therein, and all such bonds, debentures, or other *securities* shall be valid, whether the same are stamped or not:

Provided that nothing herein contained shall exempt the local authority which has issued such bonds, debentures, or other *securities*, from the duty chargeable in respect thereof prior to the twenty-sixth day of March 1897, when such duty has not already been paid or remitted by order issued by the Governor-General in Council.

(3) In the case of wilful neglect to pay the duty required by this section, the local authority shall be liable to forfeit to the Government a sum equal to ten per centum upon the amount of duty payable, and a like penalty for every month after the first month during which the neglect continues.

* Act XI. of 1879

SCHEDULE I—(continued)

Table of Rates of Ad-valorem Fees, &c.—(continued).

When the amount or value of the subject- matter exceeds	But does not exceed	Proper Fee.
Rs.	Rs	Rs A P
3,500	3,600	205 0 0
3,600	3,700	210 0 0
3,700	3,800	215 0 0
3,800	3,900	220 0 0
3,900	4,000	225 0 0
4,000	4,100	230 0 0
4,100	4,200	235 0 0
4,200	4,300	240 0 0
4,300	4,400	245 0 0
4,400	4,500	250 0 0
4,500	4,600	255 0 0
4,600	4,700	260 0 0
4,700	4,800	265 0 0
4,800	4,900	270 0 0
4,900	5,000	275 0 0
5,000	5,250	285 0 0
5,250	5,500	295 0 0
5,500	5,750	305 0 0
5,750	6,000	315 0 0
6,000	6,250	325 0 0
6,250	6,500	335 0 0
6,500	6,750	345 0 0
6,750	7,000	355 0 0
7,000	7,250	365 0 0
7,250	7,500	375 0 0
7,500	7,750	385 0 0
7,750	8,000	395 0 0
8,000	8,250	405 0 0
8,250	8,500	415 0 0
8,500	8,750	425 0 0
8,750	9,000	435 0 0
9,000	9,250	445 0 0
9,250	9,500	455 0 0
9,500	9,750	465 0 0

- (c) in the case of *bills of exchange or promissory notes written in any Oriental language*—the size of the paper on which they are written.

The italicized words in cl. (c) have been substituted for the word "hundis."

11. The following instruments may be stamped with adhesive stamps, namely :—

- (a) instruments chargeable with the duty of one anna, "or half an anna"* except parts of bills of exchange payable otherwise than on demand and drawn in sets;
- (b) bills of exchange, cheques, and promissory notes drawn or made out of British India;
- (c) entry as an advocate, vakil, or attorney on the roll of a High Court;
- (d) notarial acts; and
- (e) transfers by endorsement of shares *in any incorporated company or other body corporate*.

The italicized words in cl. (e) have been substituted for the words, "of public Companies and Associations."

12. (1) (a) Whoever affixes any adhesive stamp to any instrument chargeable with duty, and which has been executed by any person, shall, when affixing such stamp, cancel the same so that it cannot be used again: and

(b) whoever executes any instrument on any paper bearing an adhesive stamp shall, at the time of execution, unless such stamp has been already cancelled in manner aforesaid, cancel the same so that it cannot be used again.

(2) Any instrument bearing an adhesive stamp which has not been cancelled so that it cannot be used again shall, so far as such stamp is concerned, be deemed to be unstamped.

(3) *The person required by sub-section (1) to cancel an adhesive stamp may cancel it by writing on or across the stamp his name or initials, or the name or initials of his firm with the true date of his so writing, or in any other effectual manner.*

* The words have been added by Act V. of 1906, s. 3.

SCHEDULE I.—(continued).

Table of Rates of Ad-valorem Fees, &c.—(continued).

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.
Rs.	Rs.	Rs. A P
36,000	38,000	1,055 0 0
38 000	40,000	1,075 0 0
40,000	42,000	1,095 0 0
42,000	44,000	1,115 0 0
44,000	46,000	1,135 0 0
46,000	48,000	1,155 0 0
48,000	50,000	1,175 0 0
50 000	55,000	1,200 0 0
55,000	60,000	1,225 0 0
60,000	65,000	1,250 0 0
65,000	70 000	1,275 0 0
70,000	75,000	1,300 0 0
75,000	80 000	1,325 0 0
80,000	85,000	1,350 0 0
85 000	90,000	1,375 0 0
90,000	95,000	1,400 0 0
95,000	1,00,000	1,425 0 0
1 00 000	1,05,000	1,450 0 0
1,05 000	1,10,000	1,475 0 0
1,10,000	1,15,000	1,500 0 0
1,15 000	1,20,000	1,525 0 0
1,20,000	1,25,000	1,550 0 0
1 25,000	1,30,000	1,575 0 0
1,30,000	1,35,000	1,600 0 0
1,35,000	1,40,000	1,625 0 0
1,40,000	1,45,000	1,650 0 0
1,45 000	1,50,000	1,675 0 0
1,50,000	1,55,000	1,700 0 0
1,55,000	1,60,000	1,725 0 0
1,60 000	1,65,000	1,750 0 0
1,65,000	1,70,000	1,775 0 0
1,70,000	1,75,000	1,800 0 0
1 75,000	1,80,000	1,825 0 0
1,80,000	1,85,000	1,850 0 0

(2) Where any such instrument cannot, with reference to the description of stamp prescribed therefor, be duly stamped by a private person, it may be taken within the said period of three months to the Collector, *who* shall stamp the same in such manner as the Governor General in Council may by rule prescribe, with a stamp of such value as the person so taking such instrument may require and pay for.

In s. 18 (2) the italicized word *who* has been substituted for *and he*.

19. The first holder in British India of any bill of exchange, Bills, cheques, and notes cheque, or promissory note drawn or drawn out of British India. made out of British India shall, before he presents the same for acceptance or payment, or endorses, transfers, or otherwise negotiates the same in British India, affix thereto the proper stamp, and cancel the same:

Provided that—

(a) if, at the time any such bill *of exchange*, cheque, or note comes into the hands of any holder thereof in British India, the proper adhesive stamp is affixed thereto and cancelled in manner prescribed by section 12, and such holder has no reason to believe that such stamp was affixed or cancelled otherwise than by the person and at the time required by this Act, such stamp shall, so far as relates to such holder, be deemed to have been duly affixed and cancelled.

(b) Nothing contained in this proviso shall relieve any person from any penalty incurred by him for omitting to affix or cancel a stamp.

In the proviso, the italicized words *of exchange* are new, and the italicized figures 12 have been substituted for 11

D.—Of Valuations for Duty.

S 19 of the old Act has been omitted It ran as follows —

"19 *Conversion of amount expressed in certain currencies*.—Where an instrument is chargeable with *ad-valorem* duty in respect of an amount expressed in pounds sterling, pounds currency, francs, or dollars, such duty shall be calculated on the value of such money in the currency of British India according to the following scale —

"One pound sterling or pound currency is equivalent to ten rupees

"One hundred francs are equivalent to forty rupees.

"One Mexican or China dollar is equivalent to two rupees four annas."

SCHEDULE I.—(concluded)

Table of Rates of Ad-valorem Fees, &c.—(concluded).

When the amount or value of the subject- matter exceeds,	But does not exceed	Proper Fee.
Rs.	Rs	Rs A. P.
3,55,000	3,60,000	2,725 0 0
3,60,000	3,65,000	2,750 0 0
3,65,000	3,70,000	2,775 0 0
3,70,000	3,75,000	2,800 0 0
3,75,000	3,80,000	2,825 0 0
3,80,000	3,85,000	2,850 0 0
3,85,000	3,90,000	2,875 0 0
3,90,000	3,95,000	2,900 0 0
3,95,000	4,00,000	2,925 0 0
4,00,000	4,05,000	2,950 0 0
4,05,000	4,10,000	2,975 0 0
4,10,000	" "	3,000 0 0

or to be advanced by way of loan, or for an existing or future debt; or

(b) makes redeemable or qualifies a duly stamped transfer, intended as a security, of any marketable security ;

it shall be chargeable with duty as if it were an agreement or memorandum of an agreement chargeable with duty under Article No. 5 (b) of Schedule I.

(2) A release or discharge of any such instrument shall only be chargeable with the like duty.

24. Where any property is transferred to any person in consideration, wholly or in part, of any debt due to him, or subject, either certainly or contingently, to the payment or transfer of any money or stock, whether being or constituting a charge or incumbrance upon the property or not, such debt, money, or stock is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the transfer is chargeable with *ad-valorem* duty :

Provided that nothing in this section shall apply to any such certificate of sale as is mentioned in article 18 of Schedule I.

Explanation.—In the case of a sale of property subject to a mortgage or other incumbrance, any unpaid mortgage-money or money charged, together with the interest (if any) due on the same, shall be deemed to be part of the consideration for the sale :

Provided that, where property subject to a mortgage is transferred to the mortgagee, he shall be entitled to deduct from the duty payable on the transfer the amount of any duty already paid in respect of the mortgage.

Illustrations.

(1) A owes B Rs 1,000. A sells a property to B, the consideration being Rs 500 and the release of the previous debt of Rs. 1,000. Stamp-duty is payable on Rs 1,500.

(2) A sells a property to B for Rs. 500 which is subject to a mortgage to C for Rs 1,000, and unpaid interest Rs. 200. Stamp-duty is payable on Rs. 1,700.

(3) A mortgages a house of the value of Rs. 10,000 to B for Rs. 5,000. B afterwards buys the house from A. Stamp-duty is payable on Rs 10,000, less the amount of stamp-duty already paid for the mortgage.

In s. 24, the italicized portion (including the *illustrations*) is new.

SCHEDULE II—(continued).

Fixed Fees—(contd.).

NUMBER.		PROPER FEE.
1. Application or petition—(contd.).	<p>or when presented to any Civil Court* other than a principal Civil Court of original jurisdiction,† or to any Court of Small Causes constituted under Act No. XI. of 1865,‡ or under Act No. XVI. of 1868, section 20,§ or to a Collector or other officer of revenue in relation to any suit or case in which the amount or value of the subject-matter is less than fifty rupees,</p> <p>or when presented to any Civil, Criminal, or Revenue Court, or to any Board or Executive Officer for the purpose of obtaining a copy or translation of any judgment, decree, or order passed by such Court, Board, or officer, or of</p>	One anna.

* 7 Bom. A. C. J. 109

† Here the words, "or to any Cantonment Magistrate sitting as a Court of Civil Judicature under Act No. III. of 1859," have been omitted having been repealed by the Cantonments Act (XIII of 1889), s. 2 and Sch.

‡ See now the Provincial Small Cause Courts Act (IX of 1887), by which Act XI of 1865 has been repealed

§ See now s. 25 of the Bengal, North-Western Provinces, and Assam Civil Courts Act (XII of 1887)

the rent, it shall be sufficient to have estimated such royalty or the value of such share, for the purpose of stamp-duty,—

(a) when the lease has been granted by or on behalf of the Secretary of State in Council, at such amount or value as the Collector may having regard to all the circumstances of the case, have estimated as likely to be payable by way of royalty or share to the said Secretary of State in Council under the lease, or,

(b) when the lease has been granted by any other person, at twenty thousand rupees a year;

and the whole amount of such royalty or share, whatever it may be, shall be claimable under such lease."

Provided also that, where proceedings have been taken in respect of an instrument under section 31 or 41, the amount certified by the Collector shall be deemed to be the stamp actually used at the date of execution.

In s. 26, the italicized words, *the commencement of this Act*, have been substituted for the words, "this Act comes into force," and the two provisos are new

27. The consideration, if any, and all other facts and circum-

Facts affecting duty to be set forth in instrument. stances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein.

28. (1) Where any property has been contracted to be sold

Direction as to duty in case of certain conveyances. for one consideration for the whole, and is conveyed to the purchaser in separate parts by different instruments, the consideration shall be apportioned in such manner as the parties think fit, *provided* that a distinct consideration for each separate part is set forth in the conveyance relating thereto, and such conveyance shall be chargeable with *ad-valorem* duty in respect of such distinct consideration.

(2) Where property contracted to be purchased for one consideration for the whole, by two or more persons jointly, or by any person for himself and others, or wholly for others, is conveyed in parts by separate instruments to the persons by or for whom the same was purchased, for distinct parts of the consideration, the conveyance of each separate part shall be chargeable with *ad-valorem* duty in respect of the distinct part of the consideration therein specified.

SCHEDULE II.—(continued).

Fixed Fees—(contd.).

NUMBER.		PROPER FEE.
1. Application or petition—(concl'd).	(c.)—When presented to a Chief Commissioner or other Chief Controlling Revenue or Executive Authority, or to a Commissioner of Revenue or Circuit, or to any chief officer charged with the executive administration of a Division, and not otherwise provided for by this Act.	One rupee.
2. Application for leave to sue as a pauper	(d.)—When presented to a High Court	Two rupees
3. Application for leave to appeal as a pauper ... ..	... ..	Eight annas.
	(a.)—When presented to a District Court	One rupee
	(b.)—When presented to a Commissioner or a High Court	Two rupees
4. Plaint or memorandum of appeal in a suit to obtain possession under Act No XVI. of 1838, or "the Mamlatdars' Courts Act, 1876"*	... ..	Eight annas.

* The words quoted have been substituted, by the Repealing and Amending Act (XII of 1891), for the words "Bombay Act No V of 1864 (to give Mamlatdars' Courts jurisdiction in certain cases to maintain existing possession, or to restore possession to any party dispossessed otherwise than by course of law)."

"No. 6.* (*Agreement relating to Deposit of Title-deeds, Pawn or Pledge*),"

No. 13. (*Bill of exchange*),

No. 15. (*Bond*),

No. 16. (*Bottomry Bond*),

No. 26. (*Customs Bond*),

No. 27. (*Debenture*),

No. 32. (*Further charge*),

No. 34. (*Indemnity Bond*),

No. 40. (*Mortgage-deed*),

No. 49. (*Promissory note*),

No. 55. (*Release*),

No. 56. (*Respondentia Bond*),

No. 57. (*Security Bond or mortgage-deed*),

No. 58. (*Settlement*),

No. 62. (a) (*Transfer of shares in an incorporated company or other body corporate*),

(b) *Transfer of debentures being marketable securities, whether the debenture is liable to duty or not, except debentures provided for by section 8.*

(c) *Transfer of any interest secured by a bond, mortgage deed, or policy of insurance,*

by the person drawing, making, or executing such instrument :

†(b) in the case of a policy of insurance other than fire-insurance—by the person effecting the insurance ;

†(bb) in the case of a policy of fire-insurance—by the person issuing the policy.

(c) in the case of a conveyance (*including a re-conveyance of mortgaged property*)—by the grantee ; in the case of a lease or agreement to lease—by the lessee or intended lessee :

* These words and figure have been substituted for the original by Act XV of 1904, s 5

† Clauses (b) and (bb) have been substituted in place of the original cl. (b) by Act V. of 1905, s. 4.

SCHEDULE II.—(continued).

Fixed Fees—(contd.).

NUMBER.		PROPER FEE.
10 Mukhtarnama or Vakalatnama.	<p data-bbox="397 477 718 534">When presented for the conduct of any one case—</p> <p data-bbox="397 631 718 892">(a)—to any Civil or Criminal Court other than a High Court, or to any Revenue Court, or to any Collector or Magistrate, or other executive officer, except such as are mentioned in clauses (b) and (c) of this Number ...</p> <p data-bbox="397 989 718 1223">(b)—to a Commissioner of Revenue, Circuit, or Customs, or to any officer charged with the executive administration of a Division, not being the Chief Revenue or Executive Authority ..</p> <p data-bbox="397 1320 718 1475">(c)—to a High Court, Chief Commissioner, Board of Revenue, or other Chief Controlling Revenue or Executive Authority ...</p>	<p data-bbox="738 863 866 892">Eight annas.</p> <p data-bbox="738 1191 850 1219">One rupee.</p> <p data-bbox="738 1443 866 1471">Two rupees.</p>

CHAPTER III.

ADJUDICATION AS TO STAMPS.

31. (1) When any instrument, whether executed or not, and whether previously stamped or not, is brought to the Collector, and the person bringing it applies to have the opinion of that officer as to the duty (if any) with which it is chargeable, and pays a fee of such amount (not exceeding five rupees, and not less than eight annas) as the Collector may in each case direct, the Collector shall determine the duty (if any) with which, in his judgment, the instrument is chargeable.

(2) For this purpose the Collector may require to be furnished with an abstract of the instrument, and also with such affidavit or other evidence as he may deem necessary to prove that all the facts and circumstances affecting the chargeability of the instrument with duty, or the amount of the duty with which it is chargeable, are fully and truly set forth therein, and may refuse to proceed upon any such application until such abstract and evidence have been furnished accordingly:

Provided that—

- (a) no evidence furnished in pursuance of this section shall be used against any person in any civil proceeding, except in an enquiry as to the duty with which the instrument to which it relates is chargeable; and
- (b) every person by whom any such evidence is furnished shall, on payment of the full duty with which the instrument to which it relates is chargeable, be relieved from any penalty *which* he may have incurred under this Act by reason of the omission to state truly in such instrument any of the facts or circumstances aforesaid.

The italicized words in s. 31 (2) have been substituted for the words, "and may for this purpose," and the italicized word *which* in cl. (b) of the proviso is new.

32. (1) When an instrument brought to the Collector under Certificate by Collector. section 31 is, in his opinion, one of a description chargeable with duty, and

- (a) the Collector determines that it is already fully stamped,
or

SCHEDULE II.—(continued).

Fixed Fees—(contd).

NUMBER.		PROPER FEE.
14 Petition in a suit under the Native Converts' Marriage Dissolution Act, 1866 *	... ..	Five rupees.
15 [Repealed by Act V. of 1908, Sch. V]		
16 [Repealed by the Probate and Administration Act (VI. of 1889), s. 18.]		
17. Plaint or memorandum of appeal in which of the following suits —		
1 to alter or set aside a summary decision or order of any of the Civil Courts, not established by Letters Patent, or of any Revenue Court	... ..	Ten rupees
11 to alter or cancel any entry in a register of the names of proprietors of revenue-paying estates:		

* Act XXI. of 1866.

INSTRUMENTS NOT DULY STAMPED.

33. (1) Every person having, by law or consent of parties, authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument chargeable, in his opinion, with duty, is produced or comes, in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

(2) For that purpose every such person shall examine every instrument so chargeable, and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in British India when such instrument was executed or first executed:

Provided that—

- (a) nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, *if he does not think fit so to do*, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII. or Chapter XXXVI. of the Code of Criminal Procedure, 1898:*
- (b) in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.
- (3) For the purposes of this section, in cases of doubt,—

- (a) *the Governor-General in Council may determine what offices shall be deemed to be public offices, and*
- (b) *the Local Government may determine who shall be deemed to be persons in charge of public offices.*

In cl. (a) of the proviso to s. 33 (2), the italicized words are new.

34. *Where any receipt chargeable with a duty of one anna is tendered to or produced before any officer unstamped in the course of the audit of*

* Special provision as to unstamped receipts.

SCHEDULE II.—(concluded).

Fixed Fees—(concluded).

NUMBER.		PROPER FEE.
<p>20 Every petition under the Indian Divorce Act* except petitions under section 44 of the same Act, and every memorandum of appeal under section 55 of the same Act.</p>	<p>... ..</p>	<p>Twenty rupees</p>
<p>21. Plaint or memorandum of appeal under the Parsi Marriage and Divorce Act, 1865†</p>		

* Act IV. of 1869.

† Act XV of 1865.

(e) *nothing herein contained shall prevent the admission of and when executed by or any instrument in any on behalf of Government. Court when such instrument has been executed by or on behalf of the Government, or where it bears the certificate of the Collector as provided by section 32 or any other provision of this Act.*

36 *Where* an instrument has been admitted in evidence, such Admission of instrument admission shall not, except as provided *where* not to be questioned. in section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.

In s 36, the italicized word *where* has been substituted for *when*, and the italicized figures 61 have been substituted for 50.

37. *The Governor-General in Council may make rules providing that, where an instrument bears a stamp of sufficient amount, but of improper description, it may, on payment of the duty with which the same is chargeable, be certified to be duly stamped, and any instrument so certified shall then be deemed to have been duly stamped as from the date of its execution.*

38. (1) When the person impounding an instrument under Instruments impounded how section 33 has, by law or consent of dealt with. parties, authority to receive evidence, and admits such instrument in evidence upon payment of a penalty as provided by section 35, *or of duty as provided by section 37*, he shall send to the Collector an authenticated copy of such instrument, together with a certificate in writing, stating the amount of duty and penalty levied in respect thereof, and shall send such amount to the Collector, or to such person as he may appoint in this behalf.

(2) In every other case, the person so impounding an instrument shall send it in original to the Collector.

In s. 38 (1), the italicized figures and words have been substituted for the figures "34"

39. (1) When a copy of an instrument is sent to the Collector Collector's power to refund under section 38, sub-section (1), he may, penalty paid under section 38, if he thinks fit, upon application made sub-section (1). to him in this behalf, *or if no application is made, with the consent of the Chief Controlling Revenue-authority,*

SCHEDULE III.—(continued).

ANNEXURE A—(continued).

(State description and value at the price of the day, also the interest, separately calculating it to the time of making the application.)

Immoveable property, consisting of ...

(State description, giving, in the case of houses, the assessed value, if any, and the number of years' assessment the market-value is estimated at, and, in the case of land, the area, the market-value, and all rents that have accrued.)

Leasehold property ...

(If the deceased held any leases for years determinable, state the number of years' purchase the profit rents are estimated to be worth, and the value of such, inserting separately arrears due at the date of death, and all rents received or due since that date to the time of making the application.)

Property in public companies ...

(State the particulars and the value calculated at the price of the day, also the interest separately, calculating it to the time of making the application.)

Policy of insurance upon life, money out on mortgage and other securities, such as bonds, mortgages, bills, notes, and other securities for money ...

(State the amount of the whole; also the interest separately, calculating it to the time of making the application.)

Book debts ...

(Other than bad.)

Stock in trade ...

Rs A P.

section 14, the Collector may, if he thinks fit, remit the whole penalty prescribed by this section, "13" and "14" substituted for "12" and "13" respectively.

(2) Every certificate under clause (a) of sub-section (1) shall, for the purposes of this Act, be conclusive evidence of the matters stated therein.

"Sub-section (1)" substituted for "this section."

The last para. of the old s. 37 (now s. 40) has been omitted here. It was as follows: "Nothing in this section applies to an instrument chargeable with a duty of one anna only, or to a bill of exchange or promissory note."

(3) Where an instrument has been sent to the Collector under section 38, sub-section (2), the Collector shall, when he has dealt with it as provided by this section, return it to the impounding officer.

41. If any instrument chargeable with duty, and not duly stamped, not being an instrument chargeable with a duty of one anna "or half an anna" only, or a bill of exchange or promissory note, is produced by any person of his own motion before the Collector within one year from the date of its execution or first execution, and such person brings to the notice of the Collector the fact that such instrument is not duly stamped, and offers to pay to the Collector the amount of the proper duty, or the amount required to make up the same, and the Collector is satisfied that the omission to duly stamp such instrument has been occasioned by accident, mistake, or urgent necessity, he may, instead of proceeding under sections 33 and 40, receive such amount, and proceed as next hereinafter prescribed.

"Which is" after first "and" in line 1 of s. 40 omitted; the italics newly inserted, and 40 substituted for "37."

42 (1) When the duty and penalty (if any) leviable in respect of any instrument have been paid under section 35, section 40, or section 41, the person admitting such instrument in evidence or the Collector, as the case may be, shall certify by endorsement thereon that the proper duty or, as the case may be, the pro-

* These words have been inserted by Act V. of 1906, s. 3.

APPENDIX TO COURT FEES ACT.

NOTIFICATION REDUCING AND REMITTING COURT-FEES

[No. 4650 dated Sep. 10, 1889 (*Gazette of India*, 1889, Pt. I., p. 506)].

Under section 35 of the Court Fees Act, VII. of 1870, and in supersession of all previous notifications under that section, it is hereby notified that, in exercise of the power to reduce or remit, in the whole or in any part of British India, all or any of the fees mentioned in the First and Second Schedules to the said Act, the Governor-General in Council has been pleased to make the reductions and remissions hereinafter set forth, namely —

A — General for the whole of British India—

(1) to remit the fees chargeable on applications presented to a Collector for refund of the amount paid to the Government for stamped paper which has become spoiled or unfit for use, or is no longer required for use, and on applications for renewal of stamped paper which has become spoiled or unfit for use,

(2) to remit the fees chargeable on applications in writing, relating exclusively to the purchase of salt which is the property of the Government,

(3) to direct that, when a plaint disclosing a reasonable case on the merits is presented to any Civil or Revenue Court in such a form that the presiding Judge or officer, without summoning the defendant, rejects it, not for any substantial defect, but on account of an entirely technical error in form only, and so as to leave the plaintiff free to prosecute precisely the same case in another form against the same defendant or defendants, the value of the stamp on the plaint shall be refunded on presentation of an application to the Collector of the district in which the Court is situated, together with a certificate from the Judge or officer who rejected the plaint that it was rejected under the circumstances above described, and that the value of the stamp should in his opinion, be refunded,

(4) to remit the fees chargeable on—

(a) copies of village settlement-records furnished to landholders and cultivators during the currency, or at the termination of settlement-operations,

(b) lists of fields extracted from village settlement-records for the purpose of being filed with petitions of plaint in Settlement Courts,

provided that nothing in this clause shall apply to copies of judicial proceedings, or to copies of village settlement-records (other than lists of fields extracted as aforesaid), which may be filed in any Court or office,

the provisions of section 29 or any other enactment in force at the time such instrument was executed, some other person was bound to bear the expense of providing the proper stamp for such instrument, the first-mentioned person shall be entitled to recover from such other person the amount of the duty or penalty so paid.

(2) For the purpose of such recovery any certificate granted in respect of such instrument under *this Act* shall be conclusive evidence of the matters therein certified.

(3) *Such amount may if the Court thinks fit, be included in any order as to costs in any suit or proceeding to which such persons are parties, and in which such instrument has been tendered in evidence. If the Court does not include the amount in such order, no further proceedings for the recovery of the amount shall be maintainable.*

In s. 44, sub-s (1), the italicized figures 35 have been substituted for 34 and the italicized words and figures, *section 40, or section 41*, have been substituted for the words and figures, "or section 38," and, in sub-s (2), the italicized words, *this Act*, have been substituted for the words and figures "section 29"

45. (1) *Where* any penalty is paid under *section 35* or section 40, the Chief Controlling Revenue-authority may, upon application in writing made within one year from the date of the payment, refund such penalty wholly or in part.

(2) *Where, in the opinion of the Chief Controlling Revenue-authority, stamp-duty in excess of that which is legally chargeable has been charged and paid under section 35, or section 40, such authority may, upon application in writing made within three months of the order charging the same, refund the excess.*

In s 45 (1), the italicized word *Where* has been substituted for "When," and the figures and words, 35, or section 40, have been substituted for "34 or 37"

46. (1) If any instrument sent to the Collector under *section 38, sub-section (2)*, is lost, destroyed, or damaged during transmission, the person sending the same shall not be liable for such loss, destruction, or damage.

(2) When any instrument is about to be so sent, the person from whose possession it came into the hands of the person impounding the same may require a copy thereof to be made at the expense of such

Stamp Act, I. of 1879,* for the return to that person, or to the Registration-officer who impounded it of a document impounded and sent to the Collector by a Registration-officer,

(14) to remit the fee chargeable on an application made for transfer of a stock-note from one circle to another under paragraph 6 of Resolution No. 2566, dated the 20th August 1885,

(15) to remit the fees chargeable on the following documents, namely:—

- (a) copy of a charge framed under section 210 of the Code of Criminal Procedure, 1882,† or of a translation thereof, when the copy is given to an accused person,
- (b) copy of the evidence of supplementary witnesses after commitment, when the copy is given under section 219 of the said Code to an accused person.
- (c) copy or translation of a judgment in a case other than a summons case, and copy of the heads of the Judge's charge to the jury, when the copy or translation is given under section 371 of the said Code to an accused person,
- (d) copy or translation of a judgment in a summons-case, when the accused person, to whom the copy or translation is given under section 371 of the said Code, is in jail,
- (e) copy of an order of maintenance, when the copy is given, under section 490 of the said Code, to the person in whose favour the order is made, or to his guardian (if any), or to the person to whom the allowance is to be paid,
- (f) copy, furnished to any person affected by a judgment or order passed by a Criminal Court, of the Judge's charge to the jury or of any order, deposition, or other part of the record, when the copy is not a copy which may be granted under any of the preceding sub clauses without the payment of a fee, but is a copy which, on its being applied for under section 548 of the said Code, the Judge or Magistrate, for some special reason to be recorded by him on the copy, thinks fit to furnish without such payment,
- (g) copies of all documents furnished under the orders of any Court or Magistrate to any Government Advocate or Pleader or other person specially empowered in that behalf for the purpose of conducting any trial or investigation on the part of the Government before any Criminal Court,
- (h) copies of all documents which any such Advocate, Pleader, or other person is required to take in connection with any such trial or investigation for the use of any Court or Magistrate, or may consider necessary for the purpose of advising the Government in connection with any criminal proceedings;

* See now the Indian Stamp Act (II. of 1899), s. 42.

† See now the Code of Criminal Procedure (Act V of 1898)

or impressed stamps spoiled in the cases hereinafter mentioned, namely:—

The italicized words have been substituted for the words, "which the Collector may require, allowance shall be made by the Collector."

- (a) the stamp on any paper inadvertently and undesignedly spoiled, obliterated, or, by *error in writing or any other means*, rendered unfit for the purpose intended before any instrument written thereon is executed by any person:

The italics newly inserted.

- (b) *the stamp on any document which is written out wholly or in part, but which is not signed or executed by any party thereto:*

- (c) *in the case of bills of exchange, cheques, or promissory notes—*

- (1) *the stamp on any bill of exchange or cheque signed by or on behalf of the drawer which has not been accepted or made use of in any manner whatever, or delivered out of his hands for any purpose other than by way of tender for acceptance: provided that the paper on which any such stamp is impressed does not bear any signature intended as or for the acceptance of any bill of exchange or cheque to be afterwards written thereon;*

The italicized words have been substituted for the words, "The stamp used or intended to be used for any bill of exchange, cheque, or promissory note, signed by or on behalf of the drawer or intended drawer, but not delivered out of his hands to the payee, or intended payee, or any person on his behalf, or deposited with any person as a security for the payment of money, or any way negotiated, issued, or put in circulation, or made use of in any other manner, and which, being a bill of exchange or cheque, has not been accepted by the drawee, and."

- (2) *the stamp on any promissory note signed by or in behalf of the maker which has not been made use of in any manner whatever, or delivered out of his hands;*

- (3) the stamp used or intended to be used for any bill of exchange, cheque, or promissory note signed by or on behalf of the drawer thereof, but which from any omission or error, has been spoiled or

plaint, petition for execution, or memorandum of appeal to a Collector—eight annas;

memorandum of appeal to the Board of Revenue—two rupees;

(21) to remit the fees chargeable (a) on copies of judgments, decrees, or orders passed on claims preferred under the Madras Hereditary Village Offices Act, 1895 (Madras Act III. of 1895), and (b) on applications filed by either party in the course of the trial of suits or appeals, or in the course of execution of decrees under the said Act;

(22) to remit the fees chargeable under the First Schedule on plaints in summary suits brought before Collectors under Madras Act VIII. of 1865 (*an Act to consolidate and improve the laws which define the process to be taken for the recovery of rent*),

(23) to reduce the fees chargeable in suits by Government rayats for the recovery of land sold for arrears of revenue, to the amount which would be chargeable if the value of the subject-matter were only the rent of the land payable for the year next before the date of presentation of the plaint

(23a)* to remit the fees chargeable under the said Act on applications made by toddy-drawers and shop keepers for the grant of licenses permitting them or their servants to draw toddy from coconut and other palms

C—Special for the Bombay Presidency only—

(24) to remit the fees chargeable under the Second Schedule on agreements required by rule 75 of the rules made by the Governor of Bombay in Council under clause (i) of section 214 of the Bombay Land-revenue Code (Bombay Act V of 1879),

(25) † to direct that the fee chargeable on a plaint presented under the Mamlatdars' Courts Act (Bombay Act III of 1876) shall not exceed eight annas;

(26) to reduce to a uniform rate of four annas per copy the fee chargeable under article 7 of the First Schedule on copies of decrees, or orders having the force of decrees, issued by Mamlatdars under the Mamlatdars' Courts Act (Bombay Act III of 1876),

(27) to remit the fees chargeable under article 1 of the Second Schedule on all applications made to a Collector or other Revenue-officer or to the Chief Controlling Revenue authority, by any of the under-mentioned political pensioners, being the eldest sons or representatives of the ex-Amirs of Sindh and Sirdars of note —

* Cl. (23a) has been inserted by Notification No 2661-S. R., dated June 15, 1897.—See *Gazette of India*, 1897, Pt 1, p 525

† Cl (25) is superseded by the amendment made in article 4 of Schedule II of the Court Fees Act, 1870, by the Repealing and Amending Act (XII. of 1891).—See *supra*, p 56

- (6) becomes useless in consequence of the transaction intended to be thereby effected being effected by some other instrument between the same parties, and bearing a stamp of not less value :

The italicized words have been substituted for "duly stamped."

- (7) is deficient in value, and the transaction intended to be thereby effected has been effected by some other instrument between the same parties and bearing a stamp of not less value :

- (8) is inadvertently and undesignedly spoiled, and in lieu whereof another instrument made between the same parties and for the same purpose is executed and duly stamped :

Provided that, in the case of an executed instrument, no legal proceeding has been commenced in which the instrument could or would have been given or offered in evidence, and that the instrument is given up to be cancelled.

The above proviso has been substituted for the two provisos to s. 51 of the old Act. They were as follow—

"Provided that, in the case of an executed instrument—

(a) such instrument is given up to be cancelled :

(b) the application for relief is made within six months after the date of the instrument; or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed, except where, from unavoidable circumstances, any instrument for which another instrument has been substituted cannot be given up to be cancelled within the aforesaid period, and in that case within six months after the date or execution of the substituted instrument; and except where the spoiled instrument has been sent out of British India, and in that case within six months after it has been received back in British India :

Provided also that, in the case of stamped paper not having any executed instrument written thereon, the application for relief is made within six months after the stamp has been spoiled as aforesaid.

Explanation.—The certificate of the Collector under section 32, that the full duty with which an instrument is chargeable has been paid, is an impressed stamp within the meaning of this section.

Application for relief under section 49 when to be made. **50.** The application for relief under section 49 must be made within the following periods, that is to say—

District.	Number and Names of Pensioners.
Shikarpur— <i>ctd</i>	<div style="display: flex; align-items: center;"> <div style="font-size: 3em; margin-right: 10px;">{</div> <div> <p>22. Mir Gulam Murtaza Khan, walad Mir Chakar Khan</p> <p>23. Chief Dehra of the late Mir Ali Muhammad Khan</p> <p>24. 2nd Dehra of the late Mir Ali Muhammad Khan.</p> </div> </div>

(28) to remit the fees chargeable on plaints under section 16 of the Dekkhan Agriculturists' Relief Act, XVII. of 1879, except in the District of Satara, where the said fees shall be reduced to one-half,

(29) to remit the fees chargeable in respect of the documents specified in the First or Second Schedule in the case of suits for the redemption of mortgaged property when the plaintiff or, where there are several plaintiffs, any one of the plaintiffs, is an agriculturist, and when such suits are instituted within the districts of the Bombay Presidency in which the Dekkhan Agriculturists' Relief Act, XVII. of 1879, is in force except in the District of Satara, where the said fees shall be reduced to one-half,

(30) to remit the fees chargeable in respect of powers of attorney furnished to relatives, servants, or dependants under section 68 of the Dekkhan Agriculturists' Relief Act, XVII. of 1879,

(31) to remit the fees chargeable in respect of the documents specified in the First or Second Schedule in the case of suits instituted before Village-Munsifs under Chapter V. of the Dekkhan Agriculturists' Relief Act, XVII. of 1879;

(32) to remit the fees chargeable in respect of proceedings taken under section 19, second clause, of the Dekkhan Agriculturists' Relief Act, XVII. of 1879;

(33) to remit the fees chargeable in respect of proceedings in matters relating to insolvency under Chapter IV. of the Dekkhan Agriculturists' Relief Act, XVII. of 1879;

(34) to reduce to one-half the fees chargeable in the case of suits to which Chapter II. of the Dekkhan Agriculturists' Relief Act, XVII. of 1879, applies, except suits of the description mentioned in section 3, clause (w) or clause (x) of that Act, to which an agriculturist is not a party,

provided that, when the reduced fee amounts to a fraction of an anna, the fee chargeable shall be one anna,

(35) to remit the fees chargeable on copies of documents furnished by a Court of Session or the High Court in the Presidency of Bombay, or by the Sadr Court in Sind, to a pleader appointed by the Court to defend a person accused of murder,

(b) when any stamp used for an instrument has been inadvertently rendered useless under section 15, owing to such instrument having been written in contravention of the provisions of section 13,

the Collector may, on application made within six months after the date of the instrument, or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed, and upon the instrument, if chargeable with duty, being re-stamped with the proper duty, cancel and allow as spoiled the stamp so misused or rendered useless.

The italicized figures 15 and 13 in cl. (b) have been substituted for "14" and "13," respectively.

Allowance for spoiled or misused stamps how to be made.

53. In any case in which allowance is made for spoiled or misused stamps, the Collector may give in lieu thereof—

- (a) other stamps of the same description and value, or
- (b) if required and he thinks fit, stamps of any other description to the same amount in value, or,
- (c) at his discretion, the same value in money, deducting one anna for each rupee or fraction of a rupee.

54. When any person is possessed of a stamp or stamps which have not been spoiled or rendered unit or useless for the purpose intended, but for which he has no immediate use, the Collector shall repay to such person the value of such stamp or stamps in money, deducting one anna for each rupee or portion of a rupee, upon such person delivering up the same to be cancelled, and proving to the Collector's satisfaction—

- (a) that such stamp or stamps were purchased by such person with a bona-fide intention to use them, and
- (b) that he has paid the full price thereof, and
- (c) that they were so purchased within the period of six months next preceding the date on which they were so delivered:

Provided that, where the person is a licensed vendor of stamps, the Collector may, if he thinks fit, make the repayment of the sum actually paid by the vendor without any such deduction as aforesaid.

E.—Special for the North-Western Provinces only—

(38) to reduce to eight annas the fee chargeable on a copy of any number of entries in a settlement-record relating to any one village in Kumaon or Garhwal,

(39) to remit the fees chargeable on all documents filed, exhibited, or recorded in, or received or furnished by, the Court of the Special Judge appointed under the Jhansi Encumbered Estates Act, XVI of 1882,

(40) to remit the fees chargeable on all documents connected with the proceedings in the Court of the Commissioner under the Jhansi Encumbered Estates Act, XVI of 1882, except on memoranda or appeal, and on applications for revision of any decision or order of the Special Judge under Chapter VI of the said Act,

(41) to direct that the fee chargeable on any appeal against a decision of the Special Judge under Chapter VI. of the Jhansi Encumbered Estates Act, XVI. of 1882, shall not exceed eight annas.

F.—Special for the N-W. P. and Oudh only—

(41a)* to remit, in the N-W P. and Oudh, the fees chargeable on—

(a) applications presented to the Collector or any other officer empowered in this behalf by occupiers of land to cultivate the hemp plant,

(b) applications presented to the officers aforesaid by owners or occupiers of land on which the hemp plant grows spontaneously, or by persons authorized by them in this behalf for licenses to collect and store such plant as *bharg*,

(c) applications presented to the officers aforesaid by farmers and licensed wholesale vendors of intoxicating drugs authorized in this behalf under arrangements made with the owners and occupiers of land on which the hemp plant grows spontaneously for licenses to collect the produce as *bharg*, and to remove it for sale;

G.—Special for the Punjab only—

(42) to remit the fees chargeable on copies of orders or proceedings under section 47 of the Punjab Land Revenue Act, XVII of 1887, made or recorded by Collectors or other Revenue-officers engaged in revising a record-of-rights under a notification published in accordance with section 32 of the said Act,

provided that the copy is furnished for the purpose of being filed with an application or petition to a Collector or other Revenue-officer engaged as aforesaid in revising a record-of-rights, or to the Commissioner of the

* Cl (41a) forms the subject of a separate Notification [No 3380-S. R., dated Aug 7, 1896 (see *Gazette of India*, 1896, Pt 1, p 604)], and is inserted here in this form for convenience of reference.

(2) If any Collector, acting under section 31, section 40, or section 41, feels doubt as to the amount of duty with which any instrument is chargeable, he may draw up a statement of the case, and refer it with his own opinion thereon for the decision of the Chief Controlling Revenue-authority.

(3) Such authority shall consider the case, and send a copy of its decision to the Collector, *who* shall proceed to assess and charge the duty (if any) in conformity with such decision.

In s. 56 (2), the italicized figures, 31, 40, and 41, have been substituted for the figures, "30," "37," and "38," respectively; and, in cl. (3), the word "and" before the words, "Such authority," has been omitted; and the italicized word *who* substituted for the words "and he"

57. (1) The Chief Controlling Revenue-authority may state any case referred to it under section 50, sub-section (2) or otherwise coming to its notice, and refer such case, with its own opinion thereon—

(a) if the case arises in the territories for the time being administered by the Governor of Fort St. George in Council or the Governor of Bombay in Council—to the High Court of Judicature at Madras or Bombay, as the case may be:

(b) if it arises in the North-Western Provinces or Oudh or in Ajmere—to the High Court of Judicature for the North-Western Provinces:

(c) if it arises in the territories for the time being administered by the Lieutenant-Governor of the Punjab or in British Baluchistan—to the Chief Court of the Punjab:

(d) if it arises in the Central Provinces—to the High Court of Judicature at Bombay:

"(1) if it arises in Burma—to the Chief Court of Lower Burma:"*

(e) if it arises in any other part of British India—to the High Court of Judicature at Fort William.

(2) Every such case shall be decided by not less than three Judges of the High Court or Chief Court to which it is referred.

* The sentence under quotation has been inserted by the Lower Burma Courts Act (VI. of 1900), Sch. I, Pt. I.

I—Special for the Central Provinces only—

(47) to direct that the fees chargeable on a petition of objection to assessment under Act XIV. of 1867 (*An Act to provide for the assessment of the Pandhari-tax in certain parts of the Central Provinces*) shall, whatever may be the amount of the assessment to which the petition relates, be limited to one anna :

K—Special for the Bombay Presidency, Bengal, the North-Western Provinces and Oudh, the Punjab, Lower Burma, the Central Provinces, Ajmere, and Coorg—

(48)* to direct that, whenever, upon payment of the full fee, a certificate of administration has been granted under Act XL. of 1858† (*an Act for making better provision for the care of the persons and property of Minors in the Presidency of Fort William in Bengal*) or Act XX. of 1864‡ (*an Act for making better provisions for the care of the persons and property of Minors in the Presidency of Bombay*), and a fresh certificate is for any reason subsequently granted in respect of the same estate, no fee shall be chargeable upon the fresh certificate so granted.

* Cl. K—(48) is obsolete.

† The Minors Act (XL. of 1858) and the Minors (Bombay) Act (XX. of 1864) have been repealed by the Guardians and Wards Act (VIII. of 1890)

(3) References made under *sub-section (1)*, when made by a Court subordinate to a District Court, shall be made through the District Court, and, when made by any subordinate Revenue Court, shall be made through the Court immediately superior.

In s. 60, the italicized figures, 57 and 35 (wherever they occur), have been substituted for "46" and "34," respectively, while the italicized letter *a* in parenthesis is new.

In sub-s. (2), the word "and" before the words, "Such Court," has been omitted, while the italicized words are new.

In sub-s. (3), the italicized expression, *sub-section (1)*, has been substituted for the words "this section."

61. (1) When any Court, in the exercise of its civil or revenue jurisdiction, *or any Criminal Court in any proceeding under Chapter XII. or Chapter XXXVI. of the Code of Criminal Procedure, 1898,** makes any order admitting any instrument in evidence as duly stamped or as not requiring a stamp, or upon payment of duty and a penalty under section 35, the Court to which appeals lie from, or references are made by, such first-mentioned Court, may, of its own motion or on the application of the Collector, take such order into consideration.

(2) *If such Court, after such consideration,* is of opinion that such instrument should not have been admitted in evidence without the payment of duty and penalty under section 35, or without the payment of a higher duty and penalty than those paid, it may record a declaration to that effect, and determine the amount of duty with which such instrument is chargeable, and may require any person in whose possession or power such instrument then is to produce the same, and may impound the same when produced.

(3) When any declaration has been recorded under *sub-section (2)* the Court recording the same shall send a copy thereof to the Collector, and, where the instrument to which it relates has been impounded or is otherwise in the possession of such Court, shall also send him such instrument.

(4) The Collector may thereupon, notwithstanding anything contained in the order admitting such instrument in evidence, or in any certificate granted under section 42, or in section 43, prosecute any person for any offence against the Stamp-law which the Col-

* Act V. of 1898.

- Act X. of 1882**, copy of charge framed under s. 210 of, (or of a translation thereof), when given to an accused person, remission of fees chargeable on, A (15) (a), App
 copy of the evidence of supplementary witnesses after commitment when given under s 210 of, to an accused person, remission of fees chargeable on, A (15) (b), App.
 copy of translation of judgment in case other than summons-case and copy of the heads of Judge's charge when given under s 371 of, to an accused person, remission of fees chargeable on, A (15) (c), App.
 copy or translation of judgment in a summons-case when the accused person to whom it is given under s. 371 of, is in jail, remission of fees chargeable on, A (15) (d), App.
- Act XIV. of 1882**, appeals from orders under s. 244 of, fee chargeable on, A (6), App.
- Act. XVI. of 1882**, appeal against decision of Special Judge under Ch. VI. of, limit as to fee chargeable on, E (41), App.
 documents connected with certain proceedings in the Court of the Commissioner under remission of fees chargeable on, E (40), App
 documents filed, exhibited, or recorded in or received or furnished by, the Court of Special Judge appointed under, remission of fees chargeable on, E (39), App
- Act XIX of 1883**, application for loan under, remission of fee chargeable on, A (12), App
- Act XII. of 1884**, application for loan under, remission of fees chargeable on, A (12), App
- Act VIII. of 1885**, proviso in respect of application to deposit rent chargeable with fees under, D (37), App
- Act II of 1886**, application to Collector under, respecting either liability to assessment or amount of an assessment under, fee chargeable on, A—(16), App.
 copy of order passed under s. 26 of, fee chargeable on, A—(16) (b), App
- Act XVII of 1887**, copies of certain orders or proceedings under s 37 of, remission of fees chargeable on, F—(42), App
 applications under s. 97 of, made by village-officers, remission of fees chargeable on, F—(43) App.
- ADDITIONAL FEE** where net profits or market-value wrongly estimated,
 s. 10
 mesne-profits decreed exceed profits claimed, s. 11.
 respondent takes objection to unappealed part of decree,
 s. 16.

(c) voting or attempting to vote under any proxy not duly stamped,

shall for every such offence be *punishable* with fine which may extend to five hundred rupees :

Provided that, when any penalty has been paid in respect of any instrument under section 35, section 40, or section 61, the amount of such penalty shall be allowed in reduction of the fine (if any) subsequently imposed under this section in respect of the same instrument upon the person who paid such penalty.

(2) If a share-warrant is issued without being duly stamped, the company issuing the same, and also every person who, at the time when it is issued, is the managing director or secretary or other principal officer of the company, shall be *punishable with fine which may extend to five hundred rupees*.

In s. 62, the italicized word *punishable* has been substituted for *punished*; and the italicized figures 35, 40, and 61 in the proviso have been substituted for the figures "34," "37," and "50," respectively.

63. Any person required by section 12 to cancel an adhesive stamp, and failing to cancel such stamp in manner prescribed by that section, shall be *punishable* with fine which may extend to one hundred rupees.

Penalty for omission to comply with provisions of section 27.

64. Any person who, with intent to defraud the Government,—

(a) executes any instrument in which all the facts and circumstances required by section 27 to be set forth in such instrument are not fully and truly set forth, or,

(b) being employed or concerned in or about the preparation of any instrument, neglects or omits fully and truly to set forth therein all such facts and circumstances, or

(c) *does any other act calculated to deprive the Government of any duty or penalty under this Act,*

shall be *punishable* with fine which may extend to five thousand rupees.

In s 64, the words, ' of any duty,' after the word "Government," have been omitted, the italicized word *or* at the end of cl. (b) has been added, cl. (c) has been newly inserted, the italicized word *punishable* being substituted for "punished" Throughout the penal clauses, *punishable* has been substituted for *punished*.

APPLICATION in writing relating exclusively to purchase of salt belonging to Government, remission of fees chargeable on, *A—(2)*, App.

ARBITRATION, fee on agreement to refer to, Sch. II., No. 18

ARREARS of maintenance or annuities, computation of fee in suit for, s. 7, para. 1.

ASSESSMENT under Income-tax Act, fee on petition of objection to, Sch. II, No. 8.

ASSIGNEE of land-revenue, see *Land-revenue*.

ATTACHMENT of land, computation of fee in suits to set aside, s. 7, para. viii.

ATTORNEYS, fees to, saved, s. 3

AUTHORITY to an agent to distrain, exempt, s. 19, para. xiii

AWARD, fee in suit for specific performance of, s. 7, para. x, cl. (d).
to set aside an, Sch. II., No. 17, para. iv.

BENEFIT to arise out of land, see *Easement*.

BENGAL TENANCY, see *Act VIII. of 1885*

BILL-BOND in criminal case, exempt, s. 19, para. xv
given by direction of Court or executive authority, fee on, Sch. II., No. 6

BOARD OF REVENUE, exemption of certain applications to, s. 19, para. ix.
mukhtarnama presented to, Sch. II, No. 10, para. (c)..

BOMBAY ACT III. OF 1876, copies of decrees or orders issued by mamlatdars under, fees chargeable on, *C—(26)*, App.
plaint presented under fee chargeable on, *C—(25)*, App

BOMBAY ACT V. OF 1879, agreement required by rule 75 of the rules made under cl. (s) of s. 214 of, remission of fees chargeable on, *C—(24)*, App

BOMBAY PRESIDENCY, computation of fee in suit for possession of land in, s. 7, para. v.

BOND, see *Administration-bond*, *Bail-bond*.

BURMA LAND AND REVENUE, see *Act II. of 1876*.

BURNING, see *Destruction*.

CANAL, see *Irrigation*

CANCELLATION of stamp, s. 30.

of certificate under Act XXVII of 1860 or Bom. Reg. VIII. of 1827, Sch. I, No. 12-note.

CAVEAT, fee on, Sch. II., No. 12

CERTIFICATE under the Succession Certificate Act, 1889, Sch. I, No. 12.
of administration (save as regards debts and securities) under Bom. Reg. VIII of 1827, fee on s. 19, para. viii.

quent to that on which such bill or note is actually drawn or made; *or*

(b) knowing that such bill or note has been so post-dated, endorses, transfers, presents for acceptance or payment, or accepts, pays, or receives payment of, such bill or note, or in any manner negotiates the same; *or*

(c) with the like intent, practises or is concerned in any act, for other devices to defraud the revenue. contrivance, or device not specially provided for by this Act or any other law for the time being in force.

shall be *punishable* with fine which may extend to one thousand rupees.

In s. 68, the italicized words, *Any person who*, have been substituted for the word "Whoever," and the italicized word *or* at the end of both the cls. (a) and (b), has been substituted for the words, "and whoever."

Penalty for breach of rule relating to sale of stamps and for unauthorized sale.

69. (a) Any person appointed to sell stamps who disobeys any rule made under section 7[†], and

(b) any person not so appointed who sells or offers for sale any stamp (*other than a one-anna "or half an anna" adhesive stamp*),

shall be *punishable* with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

In s. 69, the italicized figures 7[†] have been substituted for "55," and the italicized words have been added.

70. (1) No prosecution in respect of any offence punishable Institution and conduct of under this Act or any Act *hereto*, repealed prosecutions. shall be instituted without the sanction of the Collector or such other officer as the Local Government generally, or the Collector specially, authorizes in that behalf.

(2) The Chief Controlling Revenue-authority, or any officer *generally or specially* authorized by it in this behalf, may stay any such prosecution, or compound any such offence.

(3) *The amount of any such composition shall be recoverable in, the manner provided by section 48.*

In s. 70, sub-s. (1), the words, "or the General Stamp Act, 1869,"[†] after the word "Act" first occurring, have been omitted, and the italicized

* These words have been inserted by Act V. of 1906, s. 3.

† Act XVIII. of 1869.

COLLECTOR (Madras Presidency), exemption of plaints in certain suits before, s 19, para vii.
 making settlement of land revenue, exemption of certain applications to, s 19, para ix
 of District to fix number of peons in Revenue Courts, s 23.
 fee on application to, where value of subject-matter is less than Rs 50, Sch II, No 1, para (a).

COMMENCEMENT OF ACT, s. 1

COMMISSION in order to ascertain net profits or market-value, s 9
 to Accountant General of High Court, Fort William, s 36

COMMISSIONER, application to, for leave to appeal as a pauper, Sch II, No 3

COMMISSIONER OF CUSTOMS, mukhtarnama to, Sch II, No. 10, para. (b)
 of REVENUE, exemption of certain applications to, s 19, para ix
 or Circuit, fee on application or petition to, and not otherwise provided for, Sch II, No 1, para (c)
 mukhtarnama presented to, Sch. II, No 10, para (b)
See Chief Commissioner.

COMPENSATION, computation of fee in suit for, s 7, para. 1.
 under Land Acquisition Act, fee on memorandum of appeal against order as to, s 8
 exemption of certain applications for, s. 19, para xxii.
 to be paid by landlord to tenant, fee on application to determine, Sch II, No 1, para. (b).

COMPLAINANT, see *Written Examination*

COMPLAINT, by public servant, municipal officer, or railway servant, exempt s 19, para xviii
 application containing s. Sch II, No 1, para (b).
 of offence other than offence for which police may arrest without warrant, Sch. II, No 1, para. (b).
See Public Servant.

COMPUTATION of fees payable in certain suits, s 2

CONDITIONAL SALE, computation of fee in suit to make, absolute, s 7, para ix.

CONFIRMATION of rules as to process-fees, s 20.

CONSERVANCY, see *Municipal Commissioners*

CONTRACT, see *Specific Performance.*

COPY of judgment or order not having force of decree, fee for, Sch. I, No 6
 of decree or order having force of decree, Sch I, No 7
 of document liable to duty under Indian Stamp Act, 1879, when left by a party in place of original withdrawn, Sch. I, No. 8.

(b) the persons by whom alone such sale is to be conducted,
and

(c) the duties and remuneration of such persons :

*Provided that such rules shall not restrict the sale of one anna " or
alf an anna " * adhesive stamps.*

" Consistent herewith " after " rules " in line 3 omitted.

75. The Governor-General in Council may make rules to
Power to make rules gener- carry out generally the purposes of this
lly to carry out Act. Act, *and may by such rules prescribe the
ines, which shall in no case exceed five hundred rupees, to be incurred
in breach thereof.*

The words, " consistent herewith, " after the word " rules " in the first
line, have been omitted, and the italicized portion has been added.

S 57 (para. 1) of the old Act has here been omitted. It was as
follows —

*" 57 Certain powers exerciseable from time to time.—All powers to
make appointments, rules, and orders conferred by this Act may be exer-
cised from time to time as occasion requires. "*

76. (1) All rules made under this Act, other than rules made
Publication of rules. under section 74, shall be published in
the *Gazette of India*, and all rules made
under section 74 shall be published in the local Gazette.

(2) All rules published as required by this section shall, upon
such publication, have *effect as if enacted by this Act.*

In the first line of s. 76 (1), after the words, " other than rules, " the
words, " consistent herewith, " have been omitted, and the italicized figures,
74, wherever they occur, have been substituted for " 55. "

In sub-s (2), the italicized words have been substituted for the words,
" the force of law "

77. Nothing *in this Act* contained shall be deemed to affect
Saving as to court-fees. the duties chargeable under any enact-
ment† for the time being in force relat-
ing to court-fees.

The italicized words, *in this Act*, have been substituted for " herein. "

* These words have been inserted by Act V. of 1906, s. 3.

† Act VII. of 1870.

ENHANCEMENT of rent of occupancy-tenant, computation of fee in suit for, s. 7, para xi, cl. (b)
 exemption of application for service of notice of, s 19, para. xii

'ESTATE' defined, s 7, para v, cl (d)
 suits for, or for part of an s. 7, para. v., cls (a), (b), (d).

EXCISE-OFFICER, fee on application to, Sch. II., No 1

EXECUTION OF DECREE stayed where mesne-profits ascertained exceed profits claimed, s 11, para. ii
 of Military Court of requests, petition for, exempt, s. 19, para iv

EXECUTIVE OFFICER, memorandum of appeal to, Sch II, No 11

EXECUTOR, penalty for, for not paying full court-fee within six months after discovery of under-payment, s. 19G.
 recovery from, of excess fee payable under s 19H, and of forfeiture under s 19G, s 19j

EXHIBIT, exemption of first application in respect of, s 19, para xiv.

EXTENT OF ACT, s 1.

FEE (excess) payable on inquiry under s 19H, recoverable from executor or administrator, s 19j

computation of, chargeable in certain suit, A (18), App.

'involving fraction of an anna remission of the fraction, A (19), App

FEES in High Courts on their original sides, ss 3, 25
 appellate sides, ss 4, 25.

in Presidency Small Cause Courts, ss 3, 25

in other Courts and in public offices, ss 6, 25

on written examinations of complaints, s 18.

for serving process, s. 20.

repayment of certain, s 31.

which officers of High Court are allowed to receive, in addition to salary, saved, s 36

FIRST APPLICATION, for summons, when exempt, s 19, para xiv

FIRST JUDGE of Presidency Small Cause Court to decide questions as to fees, s 5.

FORECLOSURE, computation of fee in suit for, s 7, para ix.

FORESTS, exemption of application for permission to cut timber in Government, s 19, para xix

FORFEITURE, under s. 19G, recoverable from executor or administrator, s 19j

GARDEN, computation of fee in suit for possession of, s 7, para v, cl (e).

GOVERNMENT ADVOCATE, copies of all documents furnished to, or required by, &c, for purpose of conducting trial, &c, before Criminal Court, remission of fees chargeable on, A (15) (g), (h), App

GOVERNMENT PLEADER, see *Government Advocate; Pleader.*

SCHEDULE I.*

STAMP-DUTY ON INSTRUMENTS.

(See section 3)

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
1. ACKNOWLEDGMENT of a debt exceeding twenty rupees in amount or value, written or signed by, or on behalf of, a debtor in order to supply evidence of such debt in any book (other than a banker's pass-book) or on a separate piece of paper when such book or paper is left in the creditor's possession, <i>provided that such acknowledgment does not contain any promise to pay the debt or any stipulation to pay interest or to deliver any goods or other property</i>	One anna
2. ADMINISTRATION-BOND, including a bond given under section 256 of the Indian Succession Act, 1865 † section 6 of the Government Savings Bank Act, 1873, ‡ section 78 of the Probate and Administration Act, 1881, § or section 9 or section 10 of the Succession Certificate Act, 1889 ||— (a) <i>where the amount does not exceed Rs 1,000</i> (b) <i>in any other case</i> ...	The same duty as a bond (No. 15) for such amount. Five rupees.

* All additions to, and modifications of, the Schedules, in the old Act (1879), are in italics.

† Act X of 1865

‡ Act V. of 1873.

§ Act V. of 1881.

|| Act VII. of 1889

LANDLORD AND TENANT, See *Abatement; Authority; Compensation; Counterpart; Enhancement; Lease; Notice of ejectment; Occupancy.*

LAND-REVENUE, suit for interest of assignee of, s 7, para vii.
to set aside attachment of interest in, s 7, para viii.
fee on application by holder of temporarily-settled land to
officer of, Sch II., No. 1

LAND REVENUE CODE (BOMBAY), see *Bombay Act V. of 1879.*

LEASE, fee in suit for specific performance of contract of, s. 7, para. 2,
cl (c).
computation of fee in suit for delivery of, s. 7, para. xi, cl (c)
See *Counterpart*

LETTERS OF ADMINISTRATION exempt where property does not exceed:
Rs 1,000, s 19, para viii
procedure on application for, s 19H
grant of, conditional, on petitioner filing
valuation of property and paying fee,
s. 19I.
fee on, Sch I., No. 11
See *Probates.*

LIMITATION, proviso in respect of, in matter of certain claims, s 19B.

LOCAL GOVERNMENT to confirm rules as to process fees, s 20
to approve number of peons in Civil Courts and in
Revenue Courts, ss 22, 23
to make rules for supply, number, renewal, and keep-
ing of accounts of stamps, s 27.

MADRAS ACT VIII. of 1865, plaints in summary suits brought before-
Collectors under, remission of fees
chargeable on, B—(22), App
Regulation VI of 1831, copies of judg-
ments or decisions passed on claims
preferred under, remission of fees
chargeable on, B—21), App
certain documents filed in claims preferred
under, fees chargeable on, B—(20),
App.

MAGISTRATE, application to, relating to dealings with Government, Sch.
II, No 1, para (a)
of a district to fix number of peons to be employed in his
Court, s 22
in his executive capacity, fee on application to, Sch. II—
No 1, para (b)

MAINTENANCE, computation of fee in suit for arrears of, s 7, para 2.
in suits for, s 7, para 11.

MANLATDARS' COURTS ACT, see *Bombay Act III of 1876.*

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
5. AGREEMENT OR MEMORANDUM OF AN AGREEMENT—	
(a) if relating to the sale of a Government security, or share in an <i>incorporated</i> Company or <i>other body corporate</i> or a Bill of Exchange	One anna.
(b) if not otherwise provided for ...	Eight annas.
<i>Exemptions.</i>	
Agreement or memorandum of agreement—	
(a) for or relating to the sale of goods or merchandize exclusively, not being a NOTE OR MEMORANDUM chargeable under No 43,	
(b) made in the form of tenders to the Government of India for or relating to any loan,	
(c) made under the European Vagrancy Act, 1874,* section 17	
AGREEMENT TO LEASE <i>See LEASE (No 35)</i>	

* Act IX. of 1874

- MORTGAGE**, fee payable in suits for s 7, para 1.
 due by Government, exemption of application for, s 19, para 22
- MORTGAGE**, fee in suit for specific performance of contract of, s 7, para. 2, cl (b).
 See Conditional Sale, Foreclosure, Redemption.
- MOVABLE PROPERTY** having a market-value, computation of fee in suit for, s 7 para iii
 no market value, computation of fee in suit for, s 7, para 12, cl (a).
- MUKHTAPYASA**, fee on, Sch II, No 10
 See Power of attorney.
- MULTI-ORIGINS SUIT**, fee on plaint or memorandum of appeal in, s. 17
- MUNICIPAL COMMISSIONERS**, fee on applications to, relating to conservancy or improvement, Sch. II, No 1, cl. (a)
 OFFICER, exemption of complaint by, s. 19, para. 20
 TAX, exemption of petition of appeal against, s 19, para 20
- NATIVE CONVERTS' MARRIAGE DISSOLUTION ACT**, fee on petition in suit under, Sch II, No 11
- NET PROFITS**, power to ascertain, s 9
 procedure in case of wrong estimation of, s 10.
- NEXT FRIEND**, *see Undertaking.*
- NON COMMISSIONED OFFICER**, *see Power-of-attorney.*
- NOTICE OF EJECTMENT**, computation of fee in suit to contest, s. 7, para 12, cl (d)
- NUMBER OF STAMPS** to be used, s 27, cl (b)
- OBLIGATION**, *see Bill and Instrument*
- OCCUPANCY** of land from which tenant has been illegally ejected, fee in suit for, s 7, para 12, cl (e)
- OCCUPANCY RIGHT**, fee on plaint in suit to establish or disprove, Sch II, No 5
- OFFICER IN ARMY**, *see Power-of-attorney*
- PANDHARI TAX**, Central Provinces, *see Act XII of 1867.*
- PRESI MARRIAGE ACT**, fee on plaint or memorandum of appeal under, Sch. II, No 21.
- PAUPER AFFAIRS**, fee on application for leave to bring, Sch II, No. 3
 suit, fee on application for leave to bring, Sch. II, No 2.
- PEONS**, rules for remunerating, s 20, para iii
 number of, in District, Subordinate, and Mofussil Small Cause Courts, s 22
 in Revenue Courts, s 23
- PERIODICAL PAYMENT**, computation of fee in suit for arrears of, s 7, para 1.
 for, s 7, para 11

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
8. APPRAISEMENT OR VALUATION made otherwise than under an order of the Court in the course of a suit—	
<i>(a) where the amount does not exceed Rs 1,000.</i>	The same duty as a <i>Bond</i> (No. 15) for such amount
<i>(b) in any other case</i>	<i>Five rupees</i>
<i>Exemptions.</i>	
<i>(a)</i> Appraisement or valuation made for the information of one party only, and not being in any manner obligatory between parties, either by agreement or operation of law.	
<i>(b)</i> Appraisement of crops for the purpose of ascertaining the amount to be given to a landlord as rent	
9. APPRENTICESHIP - D E E D including every writing relating to the service or tuition of any apprentice, clerk, or servant, placed with any master to learn any profession trade or employment, <i>not being</i> ARTICLES OF CLERKSHIP (No. 11)	Five rupees.
<i>Exemption.</i>	
Instruments of apprenticeship executed by a Magistrate under <i>the Apprentices Act, 1850,*</i> or by which a person is apprenticed by or at the charge of any public charity.	

* Act XIX of 1850 The former words were, "under Act XIX. of 1850" The "Apprentices Act, 1850," is the short title of Act XIX of 1850.—See the Indian Short Titles Act (XIV. of 1897).

PLEADER, copy of document furnished to, by Sessions Court or High Court, Bombay Presidency, or Sadar Court in Sind, to defend a person accused of murder, remission of fees chargeable on, C (351), App

POLICE-OFFICER, exemption of petition to, respecting offence, s. 19, para xvi.
copies of judgments or depositions required by, remission of fees chargeable on, A—(15) (1), App.

POLITICAL PRISONERS, applications by certain, to Collector, &c., remission of fees chargeable on, under art. 1 of the Second Schedule, C—(27), App.

POSSESSION, fees on plaint or appeal in suit under Limitation Act for, Sch I, No 2.
fee on application or petition in certain suits for, Sch. II, No 4

POWER-OF-ATTORNEY by soldier to institute or defend suit, exempt, s. 19, para 1.
See Mukhtarnama, Walalatnama

PRE-EMPTION, fee on plaint in suit to enforce right of, s. 7, para vi.

PRISONER, exemption of petition by, s. 19, para. xvii.

PROBATES exempt where property does not exceed Rs 1000, s. 19, para. viii
application for, or letters of administration, procedure on, s. 19H
grant of, conditional on petitioner filing valuation of property and paying fee, s. 19I
fee on, Sch. I, No. 11
relief in case of several grants of, s. 19C.
though not covered by court-fee, valid as to trust-property, s. 19D

PROCESS in suits before District Panchayats, Madras Presidency, exempt, s. 19, para vi
fees for serving and executing, s. 20, paras 1 and 11.
rules as to, s. 20.
tables of, s. 21

PUBLIC OFFICER, fees on instruments received or furnished by, s. 6
SERVANT, exemption of complaint by, s. 19, para xviii.

PUBLICATION of rules as to process-fees, s. 20, para 11.
as to supply, number, renewal, and keeping of accounts of stamps, s. 27.

PUNJAB LAND REVENUE, see *Act XVII. of 1887*

RAILWAY COMPANY, exemption of complaints by officers of, s. 19, para. xviii

RECOGNIZANCES, exemption of certain, s. 19, para xv

RECOVERY OF RENT, see *Madras Act VIII of 1865*

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
12 AWARD , that is to say, any decision in writing by an arbitrator or umpire, <i>not being an award directing a partition</i> , on a reference made otherwise than by an order of the Court in the course of a suit—	The same duty as a Bond (No. 15) for such amount.
(a) where the amount or value of the property to which the award relates as set forth in such award does not exceed Rs 1,000,	
(b) in any other case ..	Five rupees.
<i>Exemption</i>	
Award under <i>the Bombay District Municipal Act, 1873</i> ,* section 81, or <i>the Bombay Hereditary Offices Act, 1874</i> † section 18	
13. BILL OF EXCHANGE [<i>as defined by s. 2 (2) & (3)</i>], not being a Bond, bank-note or currency-note—	One anna
(a) where payable on demand ..	

* Bom. Act VI of 1873

† Bom. Act III. of 1874.

- SALE**, fee in suits for specific performance of contract of, s 7, para. x., cl (a)
- SECURITY**, administrator to furnish, in certain case, s 19F.
- SECURITY-BOND** for the keeping of the peace, &c, by persons other than the executants, remission of fees chargeable on, A—(7), App
- SETTLEMENT** of land-revenue, exemption of applications presented previous to final confirmation of, s 19 para ix
- SETTLEMENT-RECORD**, relating to any one village in Kumaon or Garhwal, reduction of fee chargeable on copy of entries in, E—(38), App
- SHERIFF** fees to, saved, s 3
- SHORT TITLE**, s 1.
- SMALL CAUSE COURTS**, see *Courts of Small Causes*
- SOLDIER**, see *Power-of-Attorney*
- SPECIFIC PERFORMANCE**, fee on plaint in suits for, s 7, para x
- STAMPS**, fee to be collected by, s 25
 to be impressed or adhesive, s 26
 rules for supply, number, renewal, and keeping of accounts of, s 27.
 on documents inadvertently received, s 28
 documents amended merely to correct mistake need not have fresh, s 29
 sale of, s 34
 supply of, s 27
 cancellation of, s 30
 rules regulating sale of, to be published in local official Gazette, and to have force of law, s 43 (2)
 penalties in respect of breach of rules regulating sale of, s 34 (3)
- STATEMENT** to be filed by grantees of certificate under Act XXVII of 1860, or Bom Reg VIII of 1827, Sch I, No 12
 See *Copy, Written Statements*
- STAY** of suit until additional fee is paid, s 10, para 11
 of further execution of decree for mesne-profits, s 11
- STOCK-NOTE**, application for transfer of s, from one circle to another under para 6 of Resolution No 2566 dated 20th August 1885, remission of fee chargeable on, A—(14), App
- SUITS** by Government rayats, reduction of fees chargeable in certain, B—(23), App
 for redemption of mortgaged property in districts of the Bombay Presidency in which Act XVII of 1879 is in force, remission and determination of fees chargeable in respect of documents specified in the First or Second Schedule in the case of, C—(29), App
- SUMMARY DECISION**, fee on plaint to alter or set aside, Sch. II, No 17, para 1

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
13. BILL OF EXCHANGE—<i>contd.</i>	
(c) <i>where payable at more than one year after date or sight</i> ...	The same duty as a Bond (No. 15) for the same amount.
14. BILL OF LADING (<i>including a through bill of lading</i>) ...	Four annas.
<p><i>N.B.</i>—If a bill of lading is drawn in parts, the proper stamp therefor must be borne by each one of the set.</p> <p><i>Exemptions.</i></p> <p>(a) Bill of lading when the goods therein described are received at a place within the limits of any ports as defined under the Indian Ports Act, 1889,* and are to be delivered at another place within the limits of the same port.</p> <p>(b) <i>Bill of lading when executed out of British India, and relating to property to be delivered in British India</i></p>	
15. BOND [<i>as defined by section 2 (5)</i>] not being a DEBENTURE (No. 27) and not being otherwise provided for by this Act, or by the Court-fees Act, 1870†—	

* Act X. of 1889

† Act VII. of 1870.

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
<p>15. BOND—<i>concl'd</i></p> <p><i>Exemptions</i></p> <p>Bond, when executed by—</p> <p>(a) headmen nominated under rules framed in accordance with the Bengal <i>Irrigation Act</i>, 1876,* section 99, for the due performance of their duties under that Act,</p> <p>(b) any person for the purpose of guaranteeing that the local income derived from private subscriptions to charitable dispensary or hospital or any other object of public utility shall not be less than a specified sum per mensem</p>	
<p>16. BOTTOMRY BOND, that is to say, any instrument whereby the master of a sea-going ship borrows money on the security of the ship to enable him to preserve the ship or prosecute her voyage.</p>	<p>The same duty as a Bond (No. 15) for the same amount.</p>
<p>17. CANCELLATION—INSTRUMENT OF (<i>including any instrument by which any instrument previously executed is cancelled</i>), if attested and not otherwise provided for</p>	<p>Five rupees.</p>

* Ben. Act III. of 1876.

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT	PROPER STAMP-DUTY.
19. CERTIFICATE OR OTHER DOCUMENT— <i>contd.</i>	
<i>See also</i> LETTER OF ALLOTMENT OF SHARES (No. 36).	
20. CHARTER-PARTY, that is to say, any instrument (except an agreement for the hire of a tug-steamer) whereby a vessel or some specified principal part thereof is let for the specified purposes of the charterer, <i>whether it includes a penalty clause or not</i>	One rupee.
21. CHEQUE [<i>as defined by section 2 (7)</i>]	One anna.
22. COMPOSITION-DEED, that is to say any instrument executed by a debtor whereby he conveys his property for the benefit of his creditors, or whereby payment of a composition or dividend on their debts is secured to the creditors, or whereby provision is made for the continuance of the debtor's business, under the supervision of inspectors, or under letters of license, for the benefit of his creditors	Ten rupees.
23. CONVEYANCE [<i>as defined by section 2 (10)</i>], not being a TRANSFER charged or exempted under No. 62—	

SECTIONS.

VI.—Protection orders.

- 27 Deserted wife may apply to Court for protection.
- 28 Court may grant protection-order.
- 29 Discharge or variation of orders
- 30. Liability of husband seizing wife's property after notice of order
- 31. Wife's legal position during continuance of order.

VII.—Restitution of Conjugal Rights

- 32. Petition for restitution of conjugal rights
- 33 Answer to petition.

VIII.—Damages and Costs.

- 34. Husband may claim damages from adulterer
- 35. Power to order adulterer to pay costs.
Power to order litigious intervenor to pay costs.

IX.—Alimony.

- 36. Alimony *pendente lite*.
- 37. Power to order permanent alimony
Power to order monthly or weekly payments.
- 38. Court may direct payment of alimony to wife or to her trustee

X.—Settlements.

- 39 Power to order settlement of wife's property for benefit of husband and children.
Settlement of damages.
- 40. Inquiry into existence of ante-nuptial or post-nuptial settlements

XI.—Custody of Children.

- 41. Power to make orders as to custody of children in suit for separation.

SECTIONS.

- 42. Power to make such orders after decree
- 43. Power to make orders as to custody of children in suits for dissolution or nullity
- 44. Power to make such orders after decree or confirmation

XII.—Procedure.

- 45 Code of Civil Procedure to apply
- 46. Forms of petitions and statements
- 47 Stamp on petition
Petition to state absence of collusion
Statements to be verified.
- 48 Suits on behalf of lunatics.
- 49 Suits by minors
- 50 Service of petition
- 51 Mode of taking evidence.
- 52 Competence of husband and wife to give evidence as to cruelty or desertion
- 53 Power to close doors
- 54. Power to adjourn
- 55. Enforcement of and appeals from orders and decrees.
No appeal as to costs
- 56. Appeal to Queen in Council

XIII.—Re-marriage.

- 57. Liberty to parties to marry again
- 58 English clergyman not compelled to solemnize marriages of persons divorced for adultery.
- 59. English minister refusing to perform ceremony to permit use of his church.

XIV.—Miscellaneous

- 60. Decree for separation or protection-order valid as to persons dealing with wife before reversal
Indemnity of persons making payment to wife without notice of reversal of decree or protection-order.

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT	PROPER STAMP-DUTY
<p>24 COPY OR EXTRACT certified to be a true copy or extract, by or by order of any public officer, and not chargeable under the law* for the time being in force relating to court fees—</p>	Eight annas.
<p>(i) if the original was not chargeable with duty, or if the duty with which it was chargeable does not exceed one rupee</p>	
<p>(ii) in any other case . .</p>	One rupee.
<p><i>Exemptions</i></p>	
<p>(a) Copy of any paper which a public officer is expressly required by law to make or furnish for record in any public office or for any public purpose</p>	
<p>"(b),† Copy of, or extract from, any register relating to births, baptisms, namings, dedications marriages, deaths or burials."</p>	
<p>25 COUNTERPART OR DUPLICATE of any instrument chargeable with duty, and in respect of which the proper duty has been paid—</p>	
<p>(a) if the duty with which the original instrument is chargeable does not exceed one rupee,</p>	The same duty as is payable on the original.
<p>(b) in any other case ...</p>	
	One rupee.

* Act VII of 1870

† This new clause (b) has been substituted for the original clauses (b) and (c) of the exemptions from Article No. 24, by Act V. of 1906, s 7 (1).

Act II., 1899—5.

THE INDIAN DIVORCE ACT

(Act IV. of 1869).*

RECEIVED THE G.-G.'s ASSENT ON THE 26TH FEBRUARY, 1869.

An Act to amend the Law relating to Divorce and Matrimonial Causes in India.

WHEREAS it is expedient to amend the law relating to the divorce of persons professing the Christian religion, and to confer upon certain Courts jurisdiction in matters matrimonial; It is hereby enacted as follows:—

I.—Preliminary.

Short title.	1. This Act may be called the
Commencement of Act.	Indian Divorce Act, and shall come into operation on the first day of April 1869.

* Act IV of 1869 extends to India the principal provisions of the Matrimonial Causes Act, 1857 (Stat 20 & 21 Vict, c. 85), as amended by the Matrimonial Causes Act, 1859 (Stat 22 & 23 Vict, c. 61), the Matrimonial Causes Act, 1860 (Stat 23 & 24 Vict, c. 144), and the Matrimonial Causes Act, 1866 (Stat 29 Vict, c. 32) It also embodies many rulings of Sir Cresswell Cresswell and Lord Penzance

It has been declared in force in—

- (1) The Santhal Parganas (*see* Reg III. of 1872, s. 3, as amended by Reg III of 1886).
- (2) The Arakan Hill District (*see* Reg X. of 1874, s. 3)
- (3) Upper Burma generally except the Shan States (*see* Act XX of 1886, s. 6, Pt. I.)
- (4) British Beluchistan (*see* Reg I of 1890, s. 3)
- (5) Angul and the Khondmals (*see* Reg I. of 1894, s. 3).

The Act has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts —

The Districts Hazaribagh, Lohardaga (including the present District of Palamu), and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singhbhum—*See Gazette of India*, Oct 22, 1881, Pt I., p 504

The Scheduled Districts in Ganjam and Vizagapatam —*See Fort St. George Gazette*, 1898, Pt I, p 666

It has been extended, by notification under s. 5 of the same Act, to the North-Western Provinces Taraí—*See Gazette of India*, Sep 23, 1876, Pt I, p 505

The Limitation Act does not apply to suits under this Act —*See Act XV. of 1877, s. 1*

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY
27 DEBENTURE— <i>contd</i>	
<i>See also BOND (No 15), and SECTIONS 8 and 55.</i>	
DECLARATION OF ANY TRUST — <i>See TRUST (No 6-A)</i>	
28 DELIVERY-ORDER IN RESPECT OF GOODS, that is to say, any instrument entitling any person therein named, or his assigns or the holder thereof, to the delivery of any goods lying in any dock or port, or in any ware-house in which goods are stored or deposited on rent or hire, or upon any wharf, such instrument being signed by or on behalf of the owner of such goods, upon the sale or transfer of the property therein, when such goods exceed in value twenty rupees	One anna.
DEPOSIT OF TITLE-DEEDS—" <i>See AGREEMENT</i> relating to DEPOSIT OF TITLE-DEEDS, PAWN or PLEDGE (No 6) " *	
DISSOLUTION OF PARTNERSHIP — <i>See PARTNERSHIP (No 40)</i>	
29. DIVORCE—Instrument of, that is to say, any instrument by which any person effects the dissolution of his marriage .. .	One rupee.

* Substituted for the words and figure ' *See Agreement by way of equitable mortgage (No 6),* ' by Act XV. of 1904, s 8 (2).

In the case of any petition under this Act, "High Court" is that one of the aforesaid Courts within the local limits whose ordinary appellate jurisdiction, or of whose jurisdiction under this Act, the husband and wife reside or last resided together:

(2)* "District Judge"† means,—

in the Regulation Provinces—a Judge of a principal Civil Court of original jurisdiction,

‡ in the Non-Regulation§ Provinces, other than Sindh and "Burma"||—a Commissioner of a Division;

* This clause has been substituted by the Lower Burma Courts Act (XI. of 1889), s. 97 and Sch. II.

† Under the powers conferred by s. 6 of the Scheduled Districts Act (XIV. of 1874), the powers of a "District Judge" were conferred on the Deputy Commissioner, Khasi and Jaintia Hills, the Garo Hills District, and the Naga Hills.—*See* p. 12. of the Assam Manual of Local Rules and Orders, Ed. 1893, and *Assam Gazette*, 1897, Pt. II., p. 591, and 1898, Pt. I., p. 741, respectively.

‡ Repealed in the Punjab, so far as it defines District Judge to mean the "Commissioner of a Division".—*See* s. 2 of the Punjab Courts Act (XVIII. of 1884). In that Province, the Divisional Court is, for the purpose of this Act, to be deemed to be the District Court for all districts comprised in a division.—*See* *ibid.*, s. 23, cl. (a)

In Oudh the Judicial Commissioner is, for the purposes of this Act, to be deemed the Commissioner of the Division.—*See* s. 27 of the Oudh Civil Courts Act (XIII. of 1879)

These words were substituted for the words "in the Non-Regulation Provinces, other than British Burma and Sindh—a Commissioner of a Division."

"in Pegu—the Recorder of Rangoon,"

"in Arakan—the Recorder at Rangoon until a Recorder's Court is established at Akyab, and thenceforward the Recorder at Akyab"

"in the Tenasserim Provinces—the Recorder of Moulmein,

"In Sindh—the Judicial Commissioner in that Province"

§ In the Santhal Parganas, the Commissioner has been declared to be the District Judge, and the High Court at Calcutta to be the High Court, for the purposes of the Act.—*See* s. 15 (3) of the Santhal Parganas Justice Regulation (V. of 1893)

|| The word "Burma" has been substituted for the original words—"the areas for the time being within the local limits of the ordinary civil jurisdiction of the Recorder of Rangoon, and of the civil jurisdiction of the Court of the Judge of the Town of Moulmein"—by Act VI of 1900, Sch. I

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
<p>EXTRACT.—<i>See COPY (No. 24)</i></p>	
<p>32 FURTHER CHARGE—Instrument of, <i>that is to say, any instrument</i>, imposing a further charge on mortgaged property—</p>	
<p>(a) when the original mortgage is one of the description referred to in clause (a) of article No. 40 (<i>that is, with possession</i>),</p>	<p>The same duty as a Conveyance (No. 23) for a consideration equal to the amount of the <i>further charge</i> secured by such instrument</p>
<p>(b) when such mortgage is one of the description referred to in clause (b) of article No. 40 (<i>that is, without possession</i>)—</p>	
<p>(1) if, at the time of execution of the instrument of further charge, possession of the property is given, or agreed to be given, under such instrument,</p>	<p>The same duty as a Conveyance (No. 23) for a consideration equal to the total amount of the charge (including the original mortgage and any further charge already made) less the duty already paid on such original mortgage and further charge.</p>
<p>(2) if possession is not so given.</p>	<p>The same duty as a Bond (No. 15) for the amount of the <i>further charge</i> secured by such instrument</p>

(7) "Bigamy with adultery" means adultery with the same woman with whom the bigamy was committed :

(8) "Marriage with another woman" means marriage of any person, being married, to any other person, during the life of the former wife, whether the second marriage shall have taken place within the dominions of Her Majesty or elsewhere :

(9) "Desertion" implies an abandonment against the wish of the person charging it : and

(10) "Property" includes, in the case of a wife, any property to which she is entitled for an estate in remainder or reversion, or as a trustee, executrix, or administratrix ; and the date of the death of the testator or intestate shall be deemed to be the time at which any such wife becomes entitled as executrix or administratrix.

II.—Jurisdiction.

4. The jurisdiction now exercised by the High Court in Matrimonial jurisdiction of respect of divorce *à mens et loco*, and High Courts to be exercised in all other causes, suits, and matters subject to Act. matrimonial, shall be exercised by such Courts and by the District Courts subject to the provisions in this Act contained, and not otherwise :* except so far as relates to the granting of marriage-licenses, which may be granted as if this Act had not been passed.

5. Any decree or order of the late Supreme Court of Judicature at Calcutta, Madras, or Bombay Enforcement of decrees or orders made heretofore by sitting on the ecclesiastical side, or of Supreme or High Court. any of the said High Courts sitting in the exercise of their matrimonial jurisdiction, respectively, in any cause or matter matrimonial, may be enforced and dealt with by the said High Courts, respectively, as hereinafter mentioned, in like manner as if such decree or order had been originally made under this Act by the Court so enforcing or dealing with the same.

6. All suits and proceedings in causes and matters matrimonial, which, when this Act comes into operation, are pending in any High Court, shall be dealt with and decided by such Court, so far as may be, as if they had been originally instituted therein under this Act.

* See *Gasper v. Gonzalez*, 13 B. L. R. 112.

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT	PROPER STAMP-DUTY.
35 Lease— <i>contd.</i>	
(ii) <i>where the lease purports to be for a term of not less than one year, but not more than three years :</i>	The same duty as a Bond (No. 15) for the <i>amount or value of the average annual rent reserved.</i>
(iii) <i>where the lease purports to be for a term in excess of three years .</i>	The same duty as a Conveyance (No. 23) for a consideration equal to the amount or value of the average annual rent reserved.
(iv) <i>where the lease does not purport to be for any definite term.</i>	The same duty as a Conveyance (No 25) for a consideration equal to the amount or value of the average annual rent which would be paid or delivered for the first ten years if the lease continued so long.
(v) <i>where the lease purports to be in perpetuity</i>	The same duty as a Conveyance (No 23) for a consideration equal to one fifth of the whole amount of rents which would be paid or delivered in respect of the first fifty years of the lease.
(b) <i>where the lease is granted for a fine or premium or for money advanced, and where no rent is reserved</i>	The same duty as a Conveyance (No 23) for a consideration equal to the amount or value of such fine or premium or advance as set forth in the lease

ground that his wife has, since the solemnisation thereof, been guilty of adultery.

Any wife may present a petition to the District Court or to the High Court, praying that her marriage may be dissolved on the ground that, since the solemnisation thereof, her husband has exchanged his profession of Christianity for the profession of some other religion, and gone through a form of marriage with another woman ,

or has been guilty of incestuous adultery,

or of bigamy with adultery,

or of marriage with another woman with adultery,

or of rape, sodomy, or bestiality,

or of adultery coupled with such cruelty as, without adultery, would have entitled her to a divorce *à mensa et toro*,

or of adultery coupled with desertion, without reasonable excuse, for two years and upwards.

Every such petition shall state, as distinctly as the nature of the case permits, the facts on which the claim to have such marriage dissolved is founded.

11. Upon any such petition presented by a husband, the Adulterer to be co-respondent. petitioner shall make the alleged adulterer a co-respondent to the said petition, unless he is excused from so doing on one of the following grounds, to be allowed by the Court :—

(1.)—That the respondent is leading the life of a prostitute,* and that the petitioner knows of no person with whom the adultery has been committed .

(2.)—That the name of the alleged adulterer is unknown to the petitioner, although he has made due efforts to discover it :

(3.)—That the alleged adulterer is dead.

12. Upon any such petition for the dissolution of a marriage, the Court shall satisfy itself, so far as it reasonably can, not only as to the facts alleged, but also whether or not the petitioner has been in any

* *Ree v. Ree*, 3 B. L. R., App., 10

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
35. LEASE— <i>concl'd.</i>	
(b) leases of fisheries granted under the Burma Fisheries Act, 1875,* or the Upper Burma Land and Revenue Regulation, 1889†	
36. LETTER OF ALLOTMENT OF SHARES in any Company or proposed company, or in respect of any loan to be raised by any Company or proposed Company	One anna.
<i>See also</i> CERTIFICATE OR OTHER DOCUMENT (No. 19)	
37. LETTER OF CREDIT, that is to say, any instrument by which one person authorizes another to give credit to the person in whose favour it is drawn	One anna
LETTER OF GUARANTEE— <i>See</i> AGREEMENT (No 5).	
38 LETTER OF LICENSE, that is to say, any agreement between a debtor and his creditors that the latter shall, for a specified time, suspend their claims, and allow the debtor to carry on business at his own discretion	Ten rupees

* Act VII. of 1875

† Reg II of 1889.

or of having deserted or wilfully separated himself or herself from the other party before the adultery complained of, and without reasonable excuse,

or of such wilful neglect or misconduct of or towards the other party as has conducted to the adultery.*

No adultery shall be deemed to have been condoned within the meaning of this Act unless where conjugal cohabitation has been resumed or continued.

Condonation.

15. In any suit instituted for dissolution of marriage, if the respondent opposes the relief sought on the ground, in case of such a suit instituted by a husband, of his adultery, cruelty, or desertion without reasonable excuse, or, in case of such a suit instituted by a wife, on the ground of her adultery and cruelty, the Court may in such suit give to the respondent, on his or her application, the same relief to which he or she would have been entitled in case he or she had presented a petition seeking such relief, and the respondent shall be competent to give evidence of or relating to such cruelty or desertion.

16. Every decree for a dissolution of marriage made by a High Court, not being a confirmation of a decree of a District Court,† shall, in the first instance, be a decree nisi, not to be made absolute till after the expiration of such time, not less than six months from the pronouncing thereof, as the High Court, by general or special order, from time to time directs.

During that period any person‡ shall be at liberty, in such manner as the High Court by general or special order from time to time directs, to show cause why the said decree should not be made absolute by reason of the same having been obtained by collusion or by reason of material facts not being brought before the Court.

On cause being so shown, the Court shall deal with the case by making the decree absolute, or by reversing the decree nisi, or by requiring further inquiry, or otherwise as justice may demand.

* *Gordon v Gordon*, 3 B. L. R., O. C. J., 139

† As to District Courts under this Act in the Punjab, see Act XVIII. of 1884, s. 23

‡ Other than the parties against whom the decree was made—4 B. L. R., O. C. J., 52

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
40. MORTGAGE-DEED— <i>contd.</i>	
<p><i>Explanation</i>—A mortgagor who gives to the mortgagee a power-of-attorney to collect rents or a lease of the property mortgaged or part thereof is deemed to give possession within the meaning of this article.</p>	
<p>(c) when a collateral or auxiliary or additional or substituted security, or by way of further assurance for the above-mentioned purpose where the principal or primary security, is duly stamped—</p>	
<p>for every sum secured not exceeding Rs. 1,000 </p>	Eight annas
<p>and for every Rs 1,000 or part thereof secured in excess of Rs 1 000 ..</p>	Eight annas.
<p><i>Exemptions.</i></p>	
<p>(1) Instruments, executed by persons taking advances under the Land Improvement Loans Act, 1883,* or the Agriculturists' Loans Act, 1884,† or by their sureties as security for the repayment of such advances.</p>	
<p>(2) Letters of hypothecation accompanying a bill of exchange</p>	

* Act XIX of 1883.

† Act XII. of 1884.

or of having deserted or wilfully separated himself or herself from the other party before the adultery complained of, and without reasonable excuse,

or of such wilful neglect or misconduct of or towards the other party as has conducted to the adultery.*

No adultery shall be deemed to have been condoned within the meaning of this Act unless where conjugal cohabitation has been resumed or continued.

Condonation.

15. In any suit instituted for dissolution of marriage, if the respondent opposes the relief sought on the ground, in case of such a suit instituted by a husband, of his adultery, cruelty, or desertion without reasonable excuse, or, in case of such a suit instituted by a wife, on the ground of her adultery and cruelty, the Court may in such suit give to the respondent, on his or her application, the same relief to which he or she would have been entitled in case he or she had presented a petition seeking such relief, and the respondent shall be competent to give evidence of or relating to such cruelty or desertion.

16. Every decree for a dissolution of marriage made by a High Court, not being a confirmation of a decree of a District Court,† shall, in the first instance, be a decree *nisi*, not to be made absolute till after the expiration of such time, not less than six months from the pronouncing thereof, as the High Court, by general or special order, from time to time directs.

During that period any person‡ shall be at liberty, in such manner as the High Court by general or special order from time to time directs, to show cause why the said decree should not be made absolute by reason of the same having been obtained by collusion or by reason of material facts not being brought before the Court.

Collusion.

On cause being so shown, the Court shall deal with the case by making the decree absolute, or by reversing the decree *nisi*, or by requiring further inquiry, or otherwise as justice may demand

* *Gordon v Gordon*, 3 B L R, O C J, 139

† As to District Courts under this Act in the Punjab, see Act XVIII. of 1884, s 23

‡ Other than the parties against whom the decree was made—4 B L R., O C J, 52.

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
41. MORTGAGE OF A CROP.— <i>contd.</i>	
<i>and for every Rs 100 or part thereof secured in excess of Rs. 100 ...</i>	"Two annas" *
42 NOTARIAL ACT, that is to say, any instrument, endorsement, note, at- testation, certificate, or entry <i>not being</i> a PROTEST (No. 50) made or signed by a Notary Public in the execution of the duties of his office, or by any other per- son lawfully acting as a Notary Public ..	One rupee
<i>See also PROTEST OF BILL OR NOTE (No 50)</i>	
43 NOTE OR MEMORANDUM sent by a Broker or Agent to his principal intimating the pur- chase or sale on account of such principal of any goods, stock, or marketable security exceeding in value twenty rupees	One anna.
44 NOTE OF PROTEST BY THE MASTER OF A SHIP	Eight annas.
<i>See also PROTEST BY THE MASTER OF A SHIP (No 51)</i>	
ORDER FOR THE PAYMENT OF MONEY— <i>See BILL OF EXCHANGE (No. 13).</i>	

* Substituted for "four annas" by s. 8 (5), Act XV. of 1904

her husband shall not be liable in respect of any contract, act, or costs entered into, done, omitted, or incurred by her during the separation :

Provided that, where, upon any such judicial separation, alimony has been decreed or ordered to be paid to the wife, and the same is not duly paid by the husband, he shall be liable for necessaries supplied for her use :

Provided also that nothing shall prevent the wife from joining, at any time during such separation, in the exercise of any joint power given to herself and her husband.

Reversal of Decree of Separation.

26. Any husband or wife, upon the application of whose Decree of separation obtained during absence of husband or wife may be reversed. wife or husband, as the case may be, a decree of judicial separation has been pronounced, may, at any time thereafter, present a petition to the Court by which the decree was pronounced, praying for a reversal of such decree on the ground that it was obtained in his or her absence, and that there was reasonable excuse for the alleged desertion where desertion was the ground of such decree.

The Court may, on being satisfied of the truth of the allegations of such petition, reverse the decree accordingly, but such reversal shall not prejudice or affect the rights or remedies which any other person would have had, in case it had not been decreed, in respect of any debts, contracts, or acts of the wife incurred, entered into, or done between the times of the sentence of separation and of the reversal thereof.

VI.—Protection-orders.

27. Any wife to whom the fourth section of the Indian Succession Act, 1865, does not apply, Deserted wife may apply to Court for protection. may, when deserted by her husband, present a petition to the District Court or the High Court, at any time after such desertion, for an order to protect any property which she may have acquired or may acquire, and any property of which she may have become possessed or may become possessed after such desertion, against her husband or his creditors, or any person claiming under him.

SCHEDULE I—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.	
46 PARTNERSHIP— A—INSTRUMENT OF— (a) <i>where the capital of the partnership does not exceed Rs 500 ..</i> (b) <i>in any other case ..</i> A—DISSOLUTION OF .. “PAWN OR PLEDGE— <i>See AGREEMENT RELATING TO DEPOSIT OF TITLE-DEEDS, PAWN OR PLEDGE (No 6) ”*</i>	<i>Two rupees eight annas</i> 	

* This entry has been inserted by Act XV of 1904, s. 8 (6).

† In Article 47, divisions A and B have been substituted for the original by Act V of 1906, s. 7 (3).

33. Nothing shall be pleaded in answer to a petition for restitution of conjugal rights which would not be ground for a suit for judicial separation, or for a decree of nullity of marriage.

Answer to petition.

VIII.—Damages and Costs.

34. Any husband may, either in a petition for dissolution of marriage or for judicial separation, or in a petition to the District Court or the High Court limited to such object only, claim damages from any person on the ground of his having committed adultery with the wife of such petitioner.

Such petition shall be served on the alleged adulterer and the wife unless the Court dispenses with such service, or directs some other service to be substituted.

The damages to be recovered on any such petition shall be ascertained by the said Courts,* although the respondents or either of them may not appear.

After the decision has been given, the Court may direct in what manner such damages shall be paid or applied.

35 Whenever in any petition presented by a husband, the alleged adulterer has been made a co-respondent, and the adultery has been established, the Court may order the co-respondent to pay the whole or any part of the costs of the proceedings:

Provided that the co-respondent shall not be ordered to pay the petitioner's costs—

- (1) if the respondent was, at the time of the adultery, living apart from her husband, and leading the life of a prostitute, or
- (2) if the co-respondent had not, at the time of the adultery, reason to believe the respondent to be a married woman.

Whenever any application is made under section 17, the Court, if it thinks that the applicant had no grounds or no sufficient grounds for intervening, may order him to pay the whole or any part of the costs occasioned by the application

Power to order litigious intervenor to pay costs.

* *Kelly v. Kelly*, 3 B. L. R., O. C. J., 67.

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT	PROPER STAMP-DUTY.
47. POLICY OF INSURANCE— <i>contd</i>	
C.—Accident and Sickness Insurance—	
(a) <i>against railway accident valid for a single journey only</i> ..	<i>One anna.</i>
<i>Exemption.</i>	
<i>When issued to a passenger travelling by the intermediate or the third class in any railway</i>	
(b) <i>in any other case—for the maximum amount which may become payable in the case of any single accident or sickness where such amount does not exceed Rs. 1,000, and also where such amount exceeds Rs. 1,000 for every Rs. 1,000 or part thereof</i> ...	<i>Two annas.</i>
D.—LIFE-INSURANCE OR OTHER INSURANCE NOT SPECIFICALLY PROVIDED FOR, except such a RE-INSURANCE as is described in Division E of this article—	
<i>for every sum insured not exceeding Rs 1,000, and also for every Rs 1,000 or part thereof insured in excess of Rs. 1,000—</i>	
(1) <i>if drawn singly</i> ...	<i>Six annas.</i>

the same as to the whole or any part of the money so ordered to be paid and again to revive the same order wholly or in part, as to the Court seems fit.

38. In all cases in which the Court makes any decree or order for alimony, it may direct the same to be paid either to the wife herself, or to any trustee on her behalf, to be approved by the Court, and may impose any terms or restrictions which to the Court seem expedient, and may from time to time appoint a new trustee if it appears to the Court expedient so to do.

X.—Settlements.

39. Whenever the Court pronounces a decree of dissolution of marriage or judicial separation for adultery of the wife, if it is made to appear to the Court that the wife is entitled to any property, the Court may, if it think fit, order such settlement as it thinks reasonable to be made of such property or any part thereof, for the benefit of the husband, or of the children of the marriage, or of both.

Any instrument executed pursuant to any order of the Court at the time of or after the pronouncing of a decree of dissolution of marriage or judicial separation shall be deemed valid notwithstanding the existence of the disability of coverture at the time of the execution thereof.

The Court may direct that the whole or any part of the damages recovered under section 34 shall be settled for the benefit of the children of the marriage, or as a provision for the maintenance of the wife.

40. The High Court, after a decree absolute for dissolution of marriage, or a decree of nullity of marriage,

and the District Court, after its decree for dissolution of marriage or of nullity of marriage has been confirmed,

may inquire into the existence of ante-nuptial or post-nuptial settlements made on the parties whose marriage is the subject of the decree, and may make such orders, with reference to the application of the whole or a portion of the property settled, whether for the benefit of the husband or the wife, or of the children (if

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT	PROPER STAMP-DUTY.
48. POWER-OF-ATTORNEY [<i>as defined by s 2 (21)</i>], not being a PROXY (No 52)—	
(a) when executed for the sole purpose of procuring the registration of one or more documents in relation to a single transaction or for admitting execution of one or more such documents	Eight annas
(b) when required in suits or proceedings under the Presidency Small Cause Courts Act, 1882*	Eight annas
(c) when authorizing one person or more to act in a single transaction other than the case mentioned in clause (a) ...	One rupee
(d) when authorizing not more than five persons to act jointly and severally in more than one transaction or generally ..	Five rupees
(e) when authorizing more than five, but not more than ten, persons to act jointly and severally in more than one transaction or generally	Ten rupees.

* Act XV of 1882.

and may, if it think fit, direct proceedings to be taken for placing such children under the protection of the Court.

Power to make such orders after decree or confirmation. 44. The High Court, after a decree absolute for dissolution of marriage or a decree of nullity of marriage,

and the District Court, after a decree for dissolution of marriage or of nullity of marriage has been confirmed,

may, upon application by petition for the purpose, make from time to time all such orders and provision, with respect to the custody, maintenance, and education of the minor children, the marriage of whose parents was the subject of the decree, or for placing such children under the protection of the said Court, as might have been made by such decree absolute or decree (as the case may be), or by such interim orders as aforesaid.

XII.—Procedure.

45. Subject to the provisions herein contained, all proceedings under this Act between party and party shall be regulated by the Code of Civil Procedure.*

46. The forms set forth in the Schedule to this Act, with such variation as the circumstances of each case require, may be used for the respective purposes mentioned in such Schedule.

47. Every petition† under this Act for a decree of dissolution of marriage or of nullity of marriage, or of judicial separation,‡ shall state that there is not any collusion or connivance between the petitioner and the other party to the marriage.

The statements contained in every petition under this Act shall be verified by the petitioner or some other competent person in manner required by law for the verification of complaints, and may at the hearing be referred to as evidence.

* Act XIV. of 1882, s. 3. See now Act V. of 1908 (the new Code), s. 158.

† For court-fee, see now Act VII. of 1870, Sch. II., No. 20.

‡ The words "or of reversal of judicial separation, or for restitution of conjugal rights, or for damages, shall bear a stamp of five rupees, and," and the words "in the first, second, and third cases mentioned in this section," have been repealed by the Court Fees Act (VII. of 1870), and therefore omitted.

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
<p>51. PROTEST BY THE MASTER OF A SHIP that is to say, any declaration of the particulars of her voyage drawn up by him with a view to the adjustment of losses or the calculation of averages, and every declaration in writing made by him against the charterers or the consignees for not loading or unloading the ship, when such declaration is attested or certified by a Notary Public or other person lawfully acting as such ...</p>	One Rupee
<p><i>See also</i> NOTE OF PROTEST BY THE MASTER OF A SHIP (No 44).</p>	
<p>52. PROXY empowering any person to vote at any one <i>election of the Members of a District or Local Board, or of a body of Municipal Commissioners, or at any one meeting of (a) Members of an incorporated Company or other body corporate</i> whose stock or funds is or are divided into shares and transferable, <i>(b) a Local Authority, or (c) Proprietors, Members, or Contributors to the funds of any Institution</i> ...</p>	One anna.
<p>53. RECEIPT [<i>as defined by s. 2 (23)</i>] for any money or other property the amount or value of which exceeds twenty rupees</p>	One anna.

adultery coupled with desertion without reasonable excuse, the husband and wife respectively shall be competent and compellable to give evidence of or relating to such cruelty or desertion.

53. The whole or any part of any proceeding under this Act may be heard, if the Court thinks fit, with closed doors.
Power to close doors.

54. The Court may from time to time adjourn the hearing of any petition under this Act, and may require further evidence thereon if it sees fit so to do.
Power to adjourn.

55. All decrees and orders made by the Court in any suit or proceeding under this Act shall be enforced and may be appealed* from, in the like manner as the decrees and orders of the Court made in the exercise of its original civil jurisdiction are enforced, and may be appealed from under the laws, rules, and orders for the time being in force:
Enforcement of and appeals from orders and decrees.

Provided that there shall be no appeal from a decree of a District Judge for dissolution of marriage or of nullity of marriage: nor from the order of the High Court confirming or refusing to confirm such decree:

No appeal as to costs.

Provided also that there shall be no appeal on the subject of costs only.

56. Any person may appeal to Her Majesty in Council from any decree (other than a decree nisi) or order under this Act of a High Court made on appeal or otherwise,
Appeal to Queen in Council.

and from any decree (other than a decree nisi) or order made in the exercise of original jurisdiction by Judges of a High Court or of any Division Court from which an appeal shall not lie to the High Court,

when the High Court declares that the case is a fit one for appeal to Her Majesty in Council.

* For court-fee on memorandum of appeal, see Act VII. of 1870, Sch. II, No. 20.

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
53 RECEIPT— <i>contd.</i>	
<i>Exemptions—contd.</i>	
(e) given by holders of family-certificates in cases where the person from whose pay or allowances the sum comprised in the receipt has been assigned is a non-commissioned officer or soldier of either of the said Armies, and serving in such capacity ;	
(f) for pensions or allowances by persons receiving such pensions or allowances in respect of their service as such non-commissioned officers or soldiers, and not serving the Government in any other capacity ,	
(g) given by a headman or lambar-dar for land-revenue or taxes collected by him ,	
(h) given for money or securities for money deposited in the hands of any banker, to be accounted for :	
Provided <i>that</i> the same is not expressed to be received of, or by the hands of, any other than the person to whom the same is to be accounted for :	

Church entitled to officiate within the diocese in which such church or chapel is situate, to perform such marriage-service in such church or chapel.

XIV. — Miscellaneous.

60. Every decree for judicial separation or order to protect property obtained by a wife under this Act shall, until reversed or discharged, be deemed valid, so far as necessary, for the protection of any person dealing with the wife.

Decree for separation or protection-order valid as to persons dealing with wife before reversal.

No reversal, discharge, or variation of such decree or order shall affect any rights or remedies which any person would otherwise have had in respect of any contracts or acts of the wife entered into or done between the dates of such decree or order and of the reversal, discharge, or variation thereof.

All persons who, in reliance on any such decree or order, make any payment to, or permit any transfer or act to be made or done by, the wife who has obtained the same, shall, notwithstanding such decree or order may then have been reversed, discharged, or varied, or the separation of the wife from her husband may have ceased, or at some time since the making of the decree or order been discontinued, be protected and indemnified as if, at the time of such payment, transfer, or other act, such decree or order were valid and still subsisting without variation, and the separation had not ceased, or been discontinued,

unless, at the time of the payment, transfer, or other act, such persons had notice of the reversal, discharge, or variation of the decree or order, or of the cessation or discontinuance of the separation.

61. After this Act comes into operation, no person competent to present a petition under sections 2 and 10 shall maintain a suit for criminal conversation with his wife.

Bar of suit for criminal conversation

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
55. RELEASE—<i>contd.</i>	
(a) if the amount or value of the claim does not exceed Rs 1,000.	The same duty as a Bond (No. 15) for such amount or value as set forth in the Release.
(b) in any other case	Five rupees.
56. RESPONDENTIA BOND , that is to say, any instrument securing a loan on the cargo laden or to be laden on board a ship, and making repayment contingent on the arrival of the cargo at the port of destination.	The same duty as a Bond (No. 15) for the amount of the loan secured.
REVOCAION OF ANY TRUST OR SETTLEMENT—<i>See SETTLEMENT (No. 53), TRUST (No 64)</i>	
57. SECURITY BOND OR MORTGAGE-DEED executed by way of security for the due execution of an office, or to account for money or other property received by virtue thereof, or executed by a surety to secure the due performance of a contract—	
(a) when the amount secured does not exceed Rs 1,000	The same duty as a Bond (No. 15) for the amount secured.
(b) in any other case	Five rupees.

SCHEDULE OF FORMS.

**NO. 1.—PETITION BY HUSBAND FOR A DISSOLUTION OF MARRIAGE
WITH DAMAGES AGAINST CO-RESPONDENT, BY REASON OF
ADULTERY.**

(See sections 10 and 34.)

" In the (High) Court of

To the Hon'ble Mr. Justice

[or To the Judge of]
The day of 19 .
The petition of A. B., of

SHEWETH—

1. That your petitioner was on the day of , one thousand nine hundred and , lawfully married to C. B., then C. D., spinster, at .*

2. That from his said marriage, your petitioner lived and cohabited with his said wife at and at , in , and lastly at , in , and that your petitioner and his said wife have had issue of their said marriage, *five* children, of whom *two* sons only survive, aged, respectively, *twelve* and *fourteen* years.

3. That during the *three* years immediately preceding the day of , one thousand nine hundred and , X. Y. was constantly, with few exceptions, residing in the house of your petitioner at aforesaid, and that, on divers occasions during the said period, the dates of which are unknown to your petitioner, the said C. B., in your petitioner's said house, committed adultery with the said X. Y.

4. That no collusion or connivance exists between me and my said wife for the purpose of obtaining a dissolution of our said marriage, or for any other purpose.

Your petitioner, therefore, prays that this (Hon'ble) Court will decree a dissolution of the said marriage, and that the said X. Y. do pay the sum of Rupees 5,000 as damages by reason of his having committed

* If the marriage was solemnized out of India, the adultery must be shown to have been committed in India.

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
57. SECURITY BOND OR MORTGAGE-DEED—<i>concl'd.</i>	
<p><i>Exemptions—contd.</i></p>	
<p>(e) executed by officers of Government or their sureties to secure the due execution of an office or the due accounting for money or other property received by virtue thereof.</p>	
58. SETTLEMENT—	
<p>A.—INSTRUMENT OF (<i>including a deed of dower</i>).</p>	<p>The same duty as a Bond (No. 15) for a sum equal to the amount or value of the property settled as set forth in such Settlement :</p>
	<p><i>Provided that, where an agreement to settle is stamped with the stamp required for an instrument of settlement, and an instrument of settlement in pursuance of such agreement is subsequently executed, the duty on such instrument shall not exceed eight annas.</i></p>
<p><i>Exemptions.</i></p>	
<p>(a) <i>Deed of Dower executed on the occasion of a marriage between Muhammadans.</i></p>	
<p>(b) <i>Hludansa, that is to say, any settlement of immoveable property executed by a Buddhist in Burma for a religious purpose in which no value has been specified, and on which a duty of Rs. 10 has been paid.</i></p>	

No. 4.—PETITION FOR DECREE OF NULLITY OF MARRIAGE.

(See section 18.)

In the (High) Court of
 To the Hon'ble Mr. Justice [or To the Judge of].
 The day of 19 .
 The petition of A. B., falsely called A. D.

SHEWETH—

1. That on the day of , one thousand nine hundred and , until the month of . one thousand nine hundred and , your petitioner, then a spinster, eighteen years of age, was married in fact, though not in law, to C. D., then a bachelor of about thirty years of age, at [some place in India].

2. That from the said day of , one thousand nine hundred and , your petitioner lived and cohabited with the said C. D., at divers places, and particularly at aforesaid.

3. That the said C. D. has never consummated the said pretended marriage by carnal copulation.

4. That, at the time of the celebration of your petitioner's said pretended marriage, the said C. D. was, by reason of his impotency or malformation, legally incompetent to enter into the contract of marriage.

5. That there is no collusion or connivance between her and the said C. D. with respect to the subject of this suit

Your petitioner therefore prays that this (Hon'ble) Court will declare that the said marriage is null and void.

(Signed) A. B.

Form of Verification: see No. 1.

No. 5.—PETITION BY WIFE FOR JUDICIAL SEPARATION ON THE GROUND OF HER HUSBAND'S ADULTERY.

(See section 22.)

In the (High) Court of
 To the Hon'ble Mr. Justice [or To the Judge of].
 The day of 19 .
 The petition of C. B., of , the wife of A. B.

SHEWETH—

1. That, on the day of , one thousand nine hundred and , your petitioner, then C. D., was lawfully married to A. B. at the Church of , in the .

SCHEDULE I.—*continued*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP DUTY.
SHIPPING ORDER for or relating to the conveyance of goods on board of any vessel.	One anna.
SURRENDER OF LEASE—	
(a) when the duty with which the lease is chargeable does not exceed five rupees.	The duty with which such lease is chargeable.
(b) in any other case	Five rupees
<i>Exemption.</i>	
Surrender of lease, when such lease is exempted from duty.	
TRANSFER—	
(a) Of shares in an incorporated Company or other body corporate.	One-quarter of the duty payable on a Conveyance (No. 23) for a consideration equal to the value of the share.
(b) of debentures being marketable securities, whether the debenture is liable to duty or not, except debentures provided for by section 8.	One-quarter of the duty payable on a Conveyance (No. 23) for a consideration equal to the face amount of the Debentures.
(c) of any interest secured by a Bond, Mortgage-deed, or Policy of Insurance—	
(i) if the duty on such Bond, Mortgage-deed, or Policy does not exceed five rupees.	The duty with which such Bond, Mortgage-deed, or Policy of Insurance is chargeable.
(ii) In any other case	Five rupees.
(d) of any property under the Administrator-General's Act, 1874,* section 31	Ten Rupees.

3. That he denies that he committed adultery with *G. H.*, as in the fourth paragraph of the petition alleged.

4. That the petitioner condoned the said adultery with *G. H.*, if any.

Wherefore this respondent prays that this (Hon'ble) Court will reject the prayer of the said petition.

(Signed) *A. B.*

No. 7.—STATEMENT IN REPLY TO No. 6.

In the (High) Court of

B. against *B.*

The day of

The petitioner, *C. B.*, by her attorney [*or wakil*] says—

1. That she denies that she condoned the said adultery of the respondent with *E. F.*, as in the second paragraph of the statement in answer alleged.

2. That, even if she had condoned the said adultery, the same has been revived by the subsequent adultery of the respondent with *G. H.*, as set forth in the fourth paragraph of the petition.

(Signed) *C. B.*

No. 8.—PETITION FOR A JUDICIAL SEPARATION BY REASON OF CRUELTY.

(See section 22.)

In the (High) Court of

To the Hon'ble Mr. Justice [*or To the Judge of*].

The day of 19 .

The petition of *A. B.* (wife of *C. B.*) of .

SHEWETH,

1. That on the day , one thousand nine hundred and , your petitioner, then *A. D.*, spinster, was lawfully married to *C. B.* at .

2. That from her said marriage, your petitioner lived and cohabited with her said husband at until the day of , one thousand nine hundred and , when your petitioner separated from her said husband as hereinafter

SCHE DULE I.—*concluded.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
TRUST—<i>contd.</i>	
.—REVOCATION OF—of or concerning any property <i>when made</i> by any instrument other than a WILL.	The same duty as a Bond (No. 15) for a sum equal to the amount or value of the property concerned as set forth in the instrument, but not exceeding ten rupees.
<i>See also</i> SETTLEMENT (No. 58)	
VALUATION— <i>See</i> APPRAISEMENT (No. 8).	
VAKIL— <i>See</i> ENTRY AS A VAKIL (No. 30).	
5. WARRANT FOR GOODS, that is to say, any instrument evidencing the title of any person therein named, or his assigns, or the holder thereof, to the property in any goods lying in or upon any dock, warehouse, or wharf, such instrument being signed or certified by or on behalf of the person in whose custody such goods may be	Four annas.

No. 9.—STATEMENT IN ANSWER TO No. 8.

In the (High) Court of

The day of

Between A. B., petitioner, and C.
B., respondent.

C. B., the respondent, in answer to the petition filed in this cause by W. J., his attorney [or vakil], saith that he denies that he has been guilty of cruelty towards the said A. B., as alleged in the said petition.

(Signed) C. B.

No. 10.—PETITION FOR REVERSAL OF DECREE OF SEPARATION.

(See section 24.)

In the (High) Court of
To the Hon'ble Mr. Justice

[or To the Judge of]

The day of 19

The petition of A. B., of

SHEWETH—

1. That your petitioner was, on the day of , lawfully married to

2 That on the day of , this (Hon'ble) Court, at the petition of , pronounced a decree affecting the petitioner to the effect following, to wit—

[Here set out the decree.]

3. That such decree was obtained in the absence of your petitioner, who was then residing at

[State facts tending to show that the petitioner did not know of the proceedings, and, further, that had he known, he might have offered a sufficient defence.]

or

That there was reasonable ground for your petitioner having his said wife for that his said wife

[Here state any legal grounds justifying the petitioner's separation from his wife]

Your petitioner therefore prays that this (Hon'ble) Court will reverse the said decree.

(Signed) A. B.

Form of Verification. see No. 1.

ACT NO. X. OF 1865:

The Indian Succession Act, 1865.

ARRANGEMENT OF SECTIONS.

PART I.

PRELIMINARY.

SECTIONS.

1. Short title.
2. Act to constitute law of British India in cases of intestate or testamentary succession.
3. Interpretation-clause
4. Interests and powers not acquired nor lost by marriage.

PART II.

OF DOMICILE.

5. Law regulating succession to deceased person's immoveable and moveable property respectively
6. One domicile only affects succession to moveables.
7. Domicile of origin of person of legitimate birth.
8. Domicile of origin of illegitimate child
9. Continuance of domicile of origin.
10. Acquisition of new domicile.
11. Special mode of acquiring domicile in British India.
12. Domicile not acquired by residence as representative of foreign Government, or as part of his family.
13. Continuance of new domicile.
14. Minor's domicile.

SECTIONS.

15. Domicile acquired by woman on marriage.
16. Wife's domicile during marriage.
17. Minor's acquisition of new domicile.
18. Lunatic's acquisition of new domicile.
19. Succession to moveable property in British India in absence of proof of domicile elsewhere.

PART III.

OF CONSANGUINITY.

20. Kindred or consanguinity.
21. Lineal consanguinity.
22. Collateral consanguinity.
23. Persons held for purpose of succession to be similarly related to deceased
24. Mode of computing degrees of kindred.

PART IV.

OF TESTACY.

25. As to what property deceased considered to have died intestate.
26. Devolution of such property.—
27. Where intestate has left widow and lineal descendants, or widow and kindred only, or widow and no kindred ;

he acquired in right of your petitioner as his wife, or purchased with money he acquired through her, of the value of Rs. 10,000.

3 That the said *A. B.* is entitled, under the will of his father, subject to the life interest of his mother therein, to property of the value of Rs. 5,000 or some other considerable amount.*

Your petitioner therefore prays that this (Hon'ble) Court will decree such sum or sums of money by way of alimony pending the suit as to this (Hon'ble) Court may seem meet.

(Signed) *C. D.*

Form of Verification: see No. 1.

No. 13.—STATEMENT IN ANSWER TO No 12.

In the (High) Court of

B. against *B.*

A. B., of , the above-named respondent, in answer to the petition for alimony pending the suit of *C. B.*, says—

1. In answer to the first paragraph of the said petition, I say that I have for the last *three* years carried on the business of , at , and that, from such business, I have derived a net annual income of Rs 900, but less than Rs. 1,000

2. In answer to the second paragraph of the said petition, I say that I am possessed of plate, furniture, linen, and other chattels and effects at my said house aforesaid, of the value of Rs. 7,000, but, as I verily believe, of no larger value. And I say that a portion of the said plate, furniture, and other chattels and effects of the value of Rs. 1,500, belonged to my said wife before our marriage, but the remaining portions thereof I have since purchased with my own moneys. And I say that, save as hereinbefore set forth, I am not possessed of the plate and other effects as alleged in the said paragraph in the said petition, and that I did not acquire the same as in the said petition also mentioned.

3 I admit that I am entitled under the will of my father, subject to the life-interest of my mother therein, to property of the value of Rs 5,000, that is to say, I shall be entitled under my said

* The petitioner should state her husband's income as accurately as possible.

PART X.

OF THE ATTESTATION, REVOCATION,
ALTERATION, AND REVIVAL OF
WILLS.

SECTIONS.

54. Effect of gift to attesting witness.
55. Witness not disqualified by interest or by being executor
56. Revocation of will by testator's marriage.
Power of appointment defined
57. Revocation of unprivileged will or codicil.
58. Effect of obliteration, interlineation, or alteration in unprivileged will
59. Revocation of privileged will or codicil.
60. Revival of unprivileged will.
Extent of revival of will or codicil partly revoked and afterwards wholly revoked.

PART XI

OF THE CONSTRUCTION OF WILLS.

61. Wording of will
62. Inquiries to determine questions as to object or subject of will
63. Misnomer or misdescription of object
64. When words may be supplied
65. Rejection of erroneous particulars in description of subject.
66. When part of description may not be rejected as erroneous
67. Extrinsic evidence admissible in case of latent ambiguity.
68. Extrinsic evidence inadmissible in cases of patent ambiguity or deficiency
69. Meaning of clause to be collected from entire will.
70. When words may be understood in restricted sense, and when in sense wider than usual.
71. Which of two possible constructions preferred.

SECTIONS.

72. No part rejected if it can be reasonably construed.
73. Interpretation of words repeated in different parts of will.
74. Testator's intention to be effectuated as far as possible
75. The last of two inconsistent clauses prevails.
76. Will or bequest void for uncertainty.
77. Words describing subject refer to property answering description at testator's death
78. Power of appointment executed by general bequest
79. Implied gift to objects of power in default of appointment.
80. Bequest to "heirs," &c., of particular person without qualifying terms
81. Bequest to "representatives," &c , of particular person.
82. Bequest without words of limitation.
83. Bequest in alternative.
84. Effect of words describing a class added to bequest to a person.
85. Bequest to class of persons under general description only.
86. Construction of terms.
87. Words expressing relationship denote only legitimate relatives, or, failing such relatives, reputed legitimate.
88. Rules of construction where will purports to make two bequests to same person
89. C o n s t i t u t i o n of residuary legatee.
90. Property to which residuary legatee entitled.
91. Time of vesting of legacy in general terms
92. In what case legacy lapses.
93. Legacy does not lapse if one of two joint legatees die before testator.
94. Effect of words showing testator's intention to give distinct shares.

SECTIONS.

124. Performance of condition, precedent or subsequent, within specified time.
Further time in case of fraud.

PART XVII.

OF BEQUESTS WITH DIRECTIONS AS TO APPLICATION OR ENJOYMENT.

125. Direction that fund be employed in particular manner following absolute bequest of same to or for benefit of any person.
126. Direction that mode of enjoyment of absolute bequest is to be restricted to secure specified benefit for legatee.
127. Bequest of fund for certain purposes some of which cannot be fulfilled.

PART XVIII.

OF BEQUESTS TO AN EXECUTOR.

128. Legatee named as executor cannot take unless he shows intention to act as executor.

PART XIX.

OF SPECIFIC LEGACIES.

129. Specific legacy defined,
130. Bequest of sum certain where stocks, &c, in which invested are described
131. Bequest of stock where testator had, at date of will, equal or greater amount of stock of same kind.
132. Bequest of money where not payable until part of testator's property disposed of in certain way.
133. When enumerated articles not deemed specifically bequeathed.
134. Retention, in form, of specific bequest to several persons in succession.

SECTIONS.

135. Sale and investment of proceeds of property bequeathed to two or more persons in succession.
136. Where deficiency of assets to pay legacies, specific legacy not to abate with general legacies

PART XX.

OF DEMONSTRATIVE LEGACIES.

137. Demonstrative legacy defined.
138. Order of payment when legacy directed to be paid out of fund the subject of specific legacy.

PART XXI.

OF ADEMPITION OF LEGACIES.

139. Ademption explained.
140. Non-ademption of demonstrative legacy.
141. Ademption of specific bequest of right to receive something from third party.
142. Ademption *pro tanto* by testator's receipt of part of entire thing specifically bequeathed.
143. Ademption *pro tanto* by testator's receipt of portion of entire fund, of which portion has been specifically bequeathed.
144. Order of payment where portion of fund specifically bequeathed to one legatee, and legacy charged on same fund to another, and, testator having received portion of that fund, remainder insufficient to pay both legacies.
145. Ademption where stock specifically bequeathed does not exist at testator's death
146. Ademption *pro tanto* where stock specifically bequeathed exists in part only at testator's death.

SECTIONS.

- 25. Liability for expenses necessary for preservation of easement
- 26. Liability for damage from want of repair
- 27. Servient owner not bound to do anything
- 28. Extent of easements.
Easement of necessity.
Other easements—
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 (b) right to light or air acquired by grant,
 (c) prescriptive right to light or air;
 (d) prescriptive right to pollute air or water,
 (e) other prescriptive rights.
- 29. Increase of easement.
- 30. Partition of dominant heritage
- 31. Obstruction in case of excessive user.

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- 34. When cause of action arises for removal of support.
- 35. Injunction to restrain disturbance
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THE EXTINCTION, SUSPENSION,
AND REVIVAL OF EASEMENTS

- 37. Extinction by dissolution of right of servient owner
- 38. Extinction by release.
- 39. Extinction by revocation.

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- 40. Extinction on expiration of limited period or happening of dissolving condition
- 41. Extinction on termination of necessity.
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- 43. Extinction by permanent change in dominant heritage
- 44. Extinction on permanent alteration of servient heritage by superior force.
- 45. Extinction by destruction of either heritage
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- 48. Extinction of accessory rights.
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- 59. Grantor's transferee not bound by license
- 60. License when revocable
- 61. Revocation, express or implied
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- 172. Person taking in individual capacity under will may, in other character, elect to take in opposition
- 173. When acceptance of benefit given by will constitutes election to take under will.
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- 178. Property transferable by gift made in contemplation of death.
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Such gift resumable.
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- 180. Administration with copy annexed of authenticated copy of will proved abroad
- 181. Probate only to appointed executor.
- 182. Appointment, express or implied.
- 183. Persons to whom probate cannot be granted.
- 184. Grant of probate to several executors simultaneously or at different times.
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- 186. Accrual of representation to surviving executor.
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- 188. Effect of probate.
- 189. To whom administration may not be granted.
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- 194. Form and effect of renunciation of executorship.
- 195. Procedure where executor renounces or fails to accept within time limited.
- 196. Grant of administration to universal or residuary legatee.
- 197. Right to administration of representative of deceased residuary legatee.
- 198. Grant of administration where no executor, nor residuary legatee, nor representative of such legatee.
- 199. Citation before grant of administration to legatee other than universal or residuary.
- 200. Order in which connections entitled to administer.
- 201. Administration to widow unless Court see cause to exclude her.
- 202. Association with widow in administration.
- 203. Administration where no widow or widow excluded. Proviso.
- 204. Title of kindred to administration.
- 205. Right of widower to administration of wife's estate.
- 206. Grant of administration to creditor.

any person may possess irrespective of other immoveable property ; or

(c) any right acquired, or arising out of a relation created, before this Act comes into force.

3. Sections 26 and 27 of the Indian Limitation Act, 1877,* and the definition of "easement" contained in that Act, are repealed in the territories to which this Act extends. All references in any Act or Regulation to the said sections, or to sections 27 and 28 of Act No. IX. of 1871, shall, in such territories, be read as made to sections 15 and 16 of this Act.

CHAPTER I.

OF EASEMENTS GENERALLY.

4. An easement is a right which the owner or occupier of certain land possesses as such, for the beneficial enjoyment of that land, to do and continue to do something, or to prevent and continue to prevent something being done, in or upon or in respect of certain other land not his own.

The land for the beneficial enjoyment of which the right exists Dominant and servient is called the dominant heritage, and the heritages and owners. owner or occupier thereof the dominant owner ; the land on which the liability is imposed is called the servient heritage, and the owner or occupier thereof the servient owner.

Explanation.—In the first and second clauses of this section, the expression "land" includes also things permanently attached to the earth ; the expression "beneficial enjoyment" includes also possible convenience, remote advantage, and even a mere amenity ; and the expression "to do something" includes removal and appropriation by the dominant owner, for the beneficial enjoyment of the dominant heritage, of any part of the soil of the servient heritage, or anything growing or subsisting thereon.

Illustrations.

(a.) A, as the owner of a certain house, has a right of way thither over his neighbour B's land for purposes connected with the beneficial enjoyment of the house. This is an easement.

* Act XV. of 1877.

SECTIONS.

PART XXXI.

OF THE PRACTICE IN GRANTING AND REVOKING PROBATES AND LETTERS OF ADMINISTRATION.

- 235. Jurisdiction of District Judge in granting and revoking probates, &c.
- 235A. Power to appoint Delegate or District Judge to deal with non-contentious cases
- 236. District Judge's powers as to grant of probate and administration.
- 237. District Judge may order person to produce testamentary papers
- 238. Proceedings of District Judge's Court in relation to probate and administration.
- 239. When and how District Judge to interfere for protection of property.
- 240. When probate or administration may be granted by District Judge
- 241. Disposal of application made to Judge of district in which deceased had no fixed abode.
- 241A. Probate and letters of administration may be granted by Delegate.
- 242. Conclusiveness of probate or letters of administration. Effect of unlimited probates, &c., granted by High Court.
- 242A. Transmission to High Courts of certificate of grants under proviso to section 242
- 243. Conclusiveness of application for probate or administration if properly made and verified
- 244. Petition for probate.
- 245. In what cases translation of will to be annexed to petition Verification of translation by person other than Court translator
- 246. Petition for letters of administration.

SECTIONS.

- 246A. Addition to statements in petition, etc., for probate or letters of administration in certain cases.
- 247. Petition for probate or administration to be signed and verified.
- 248. Verification of petition for probate by one witness to will.
- 249. Punishment for false averment in petition or declaration.
- 250. District Judge may examine petitioner in person, require further evidence, and issue citations to inspect proceedings. Publication of citation.
- 251. Caveats against grant of probate or administration.
- 252. Form of caveat
- 253. After entry of caveat, no proceeding taken on petition until after notice to caveator.
- 253A. District Delegate when not to grant probate or administration.
- 253B. Power to transmit statement to District Judge in doubtful cases where no contention.
- 253C. Procedure where there is contention, or District Delegate thinks probate or letters of administration should be refused in his Court
- 254. Grant of probate to be under seal of Court
Form of such grant
- 255. Grant of letters of administration to be under seal of Court
Form of such grant.
- 256. Administration-bond.
- 257. Assignment of administration bond.
- 258. Time for grant of probate administration
- 259. Filing of original wills of probate or administration will annexed granted.
- 260. Grantee of probate, or administration alone to sue, same revoked.

6. An easement may be permanent, or for a term of years or other limited period, or subject to periodical interruption, or exercisable only at a certain place, or at certain times, or between certain hours, or for a particular purpose, or on condition that it shall commence or become void or voidable on the happening of a specified event or the performance or non-performance of a specified act.

Easements restrictive of certain rights.

7. Easements are restrictions of one or other of the following rights (namely).—

(a.) The exclusive right of every owner of immoveable property (subject to any law for the time being in force) to enjoy and dispose of the same and all products thereof and accessions thereto

(b.) The right of every owner of immoveable property (subject to any law for the time being in force) to enjoy without disturbance by another the natural advantages arising from its situation.

Illustrations of the Rights above referred to

(a.) The exclusive right of every owner of land in a town to build on such land, subject to any municipal law for the time being in force

(b.) The right of every owner of land that the air passing thereto shall not be unreasonably polluted by other persons.

(c.) The right of every owner of a house that his physical comfort shall not be interfered with materially and unreasonably by noise or vibration caused by any other person.

(d.) The right of every owner of land to so much light and air as pass vertically thereto

(e.) The right of every owner of land that such land, in its natural condition, shall have the support naturally rendered by the subjacent and adjacent soil of another person.

Explanation — Land is in its natural condition when it is not excavated and not subjected to artificial pressure; and the "subjacent and adjacent soil" mentioned in this illustration means such soil only as in its natural condition would support the dominant heritage in its natural condition.

(f.) The right of every owner of land that, within his own limits, the water which naturally passes or percolates by, over, or through his land, shall not, before so passing or percolating, be unreasonably polluted by other persons.

(g.) The right of every owner of land to collect and dispose, within his own limits, of all water under the land which does not pass in a defined

SECTIONS

PART XXXV.

OF THE EXECUTOR'S ASSENT TO A LEGACY.

- 292. Assent necessary to complete legatee's title
- 293. Effect of executor's assent to specific legacy
Nature of assent.
- 294. Conditional assent.
- 295. Assent of executor to his own legacy
Implied assent
- 296. Effect of executor's assent.
- 297. Executor when to deliver legacies

PART XXXVI.

OF THE PAYMENT AND APPORTIONMENT OF ANNUITIES

- 298. Commencement of annuity when no time fixed by will.
- 299 When annuity, to be paid quarterly or monthly, first falls due
- 300. Dates of successive payments when first payment directed to be made within given time or on day certain.
Apportionment where annuitant dies between times of payment.

PART XXXVII.

OF THE INVESTMENT OF FUNDS TO PROVIDE FOR LEGACIES.

- 301. Investment of sum bequeathed where legacy, not specific, given for life.
- 302. Investment of general legacy to be paid at future time.
Intermediate interest.
- 303. Procedure when no fund charged with, or appropriated to, annuity.
- 304. Transfer to residuary legatee of contingent bequest.

SECTIONS.

- 305. Investment of residue bequeathed for life, without direction to invest in particular securities
- 306 Investment of residue bequeathed for life with direction to invest in specified securities.
- 307. Time and manner of conversion and investment
Interest payable until investment.
- 308. Procedure where minor entitled to immediate payment or possession of bequest, and no direction to pay to person on his behalf.

PART XXXVIII

OF THE PRODUCE AND INTEREST OF LEGACIES

- 309. Legatee's title to produce of specific legacy
- 310. Residuary legatee's title to produce of residuary fund.
- 311. Interest when no time fixed for payment of general legacy.
- 312. Interest when time fixed.
- 313 Rate of Interest.
- 314. No interest on arrears of annuity within first year after testator's death.
- 315. Interest on sum to be invested to produce annuity.

PART XXXIX.

OF THE REFUNDING OF LEGACIES.

- 316. Refund of legacy paid under Judge's orders.
- 317. No refund if paid voluntarily.
- 318. Refund when legacy has become due on performance of condition within further time allowed under section 124.
- 319. When each legatee compellable to refund in proportion.

9. Subject to the provisions of section 8, a servient owner may impose on the servient heritage any easement that does not lessen the utility of the existing easement. But he cannot, without the consent of the dominant owner, impose an easement on the servient heritage which would lessen such utility.

Servient owners.

Illustrations.

(a) A has in respect of his mill a right to the uninterrupted flow thereto, from sunrise to noon, of the water of B's stream. B may grant to C the right to divert the water of the stream from noon to sunset, provided that A's supply is not thereby diminished.

(b.) A has, in respect of his house, a right of way over B's land. B may grant to C, as the owner of a neighbouring farm, the right to feed his cattle on the grass growing on the way provided that A's right of way is not thereby obstructed.

10. Subject to the provisions of section 8, a lessor may impose, on the property leased, any easement that does not derogate from the rights of the lessee as such, and a mortgagor may impose, on the property mortgaged, any easement that does not render the security insufficient. But a lessor or mortgagor cannot, without the consent of the lessee or mortgagee, impose any other easement on such property unless it be to take effect on the termination of the lease or the redemption of the mortgage.

Lessor and mortgagor.

Explanation.—A security is insufficient within the meaning of the section unless the value of the mortgaged property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the amount for the time being due on the mortgage.

11. No lessee or other person having a derivative interest may impose, on the property held by him as such, an easement to take effect after the expiration of his own interest, or in derogation of the right of the lessor or the superior proprietor.

Lessee.

12. An easement may be acquired by the owner of the immovable property for the beneficial enjoyment of which the right is created, or, on his behalf, by any person in possession of the same.

Who may acquire easement.

One of two or more co-owners of immovable property may, as such, with or without the consent of the other or others, acquire an easement for the beneficial enjoyment of such property.

ACT NO. X. OF 1865:*

The Indian Succession Act, 1865.

RECEIVED THE G.-G.'S ASSENT ON THE 16TH MARCH 1865.

An Act to amend and define the Law of Intestate and Testamentary Succession in British India.

Preamble. WHEREAS it is expedient to amend and define the rules of law applicable to Intestate and Testamentary Succession in British India; It is enacted as follows:—

PART I.

PRELIMINARY.

Short title.

1. This Act may be cited as "The Indian Succession Act, 1865."

2. Except as provided by this Act, or by any other law for the time being in force, the rules herein contained shall constitute the law of British India applicable to all cases of intestate or testamentary succession.[†]

Act to constitute law of British India in cases of intestate or testamentary succession

* Act X. of 1865 has been declared in force in—

(1) the Santhal Parganas (*see* Reg. III. of 1872, s. 3, as amended by Reg III of 1886),

(2) the Arakan Hill District, but not so as to affect Native Christians (*see* Reg. IX of 1874, s. 3)

(3) Upper Burma generally except the Shan States (*see* Act XX of 1886, s 6),

(4) British Baluchistan (*see* Reg. I of 1890, s. 3).

The Act has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts .—

The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singhbhum—*See Gazette of India*, Oct 22, 1881, Pt. I., p 504.

The North-Western Provinces Tarai.—*See Gazette of India*, Sep. 23, 1876, Pt. I., p 505.

As to the application of portions of the Act to the wills of Hindus, Jainas, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay, *see* the Hindu Wills Act (XXI. of 1870).

As to the exemption of Parsis from portions of the Act, *see* the Parsi Intestate Succession Act (XXI. of 1865). For further exemptions from the Act, *see* ss. 331, 332, *infra*.

† *See* 12 B. L. R 427

Illustrations.

(a.) A sells B a field then used for agricultural purposes only. It is inaccessible except by passing over A's adjoining land, or by trespassing on the land of a stranger. B is entitled to a right of way, for agricultural purposes only, over A's adjoining land to the field sold.

(b.) A, the owner of two fields, sells one to B, and retains the other. The field retained was, at the date of the sale, used for agricultural purposes only, and is inaccessible except by passing over the field sold to B. A is entitled to a right of way, for agricultural purposes only, over B's field to the field retained.

(c.) A sells B a house with windows overlooking A's land which A retains. The light which passes over A's land to the windows is necessary for enjoying the house as it was enjoyed when the sale took effect. B is entitled to the light, and A cannot afterwards obstruct it by building on his land.

(d.) A sells B a house with windows overlooking A's land. The light passing over A's land to the windows is necessary for enjoying the house as it was enjoyed when the sale took effect. Afterwards A sells the land to C. Here C cannot obstruct the light by building on the land, for he takes it subject to the burdens to which it was subject in A's hands.

(e.) A is the owner of a house and adjoining land. The house has windows overlooking the land. A simultaneously sells the house to B, and the land to C. The light passing over the land is necessary for enjoying the house as it was enjoyed when the sale took effect. Here A impliedly grants B a right to the light, and C takes the land subject to the restriction that he may not build so as to obstruct such light.

(f.) A is the owner of a house and adjoining land. The house has windows overlooking the land. A retaining the house, sells the land to B, without expressly reserving any easement. The light passing over the land is necessary for enjoying the house as it was enjoyed when the sale took effect. A is entitled to the light, and B cannot build on the land so as to obstruct such light.

(g.) A, the owner of a house, sells B a factory built on adjoining land. B is entitled, as against A, to pollute the air, when necessary, with smoke and vapours from the factory.

(h.) A, the owner of two adjoining houses, Y and Z, sells Y to B, and retains Z. B is entitled to the benefit of all the gutters and drains common to the two houses and necessary for enjoying Y as it was enjoyed when the sale took effect, and A is entitled to the benefit of all the gutters and drains common to the two houses and necessary for enjoying Z as it was enjoyed when the sale took effect.

(i.) A, the owner of two adjoining buildings, sells one to B, retaining the other. B is entitled to a right to lateral support from A's building, and A is entitled to a right to lateral support from B's building.

(j.) A, the owner of two adjoining buildings, sells one to B, and the other to C. C is entitled to lateral support from B's building, and B is entitled to lateral support from C's building.

"Will" means the legal declaration of the intentions of the testator with respect to his property, which he desires to be carried into effect after his death :

"Will."

"Codicil" means an instrument made in relation to a will, and explaining, altering, or adding to its dispositions. It is considered as forming an additional part of the will :

"Codicil."

"Probate" means the copy of a will certified under the seal of a Court of competent jurisdiction, with a grant of administration to the estate of the testator :

"Probate "

"Executor" means a person to whom the execution of the last will of a deceased person is, by the testator's appointment, confided :

"Executor "

"Administrator" means a person appointed by competent authority to administer the estate of a deceased person when there is no executor :

"Administrator."

And in every part of British India to which this Act shall extend, "Local Government" shall mean the person authorized by law to administer executive government in such part ; and

"Local Government "

"High Court" shall mean the highest Civil Court of Appeal therein, *and for the purposes of sections 242, 242A, 246A, and 277A, shall include the Court of the Recorder of Rangoon.*

"High Court."

4 No person shall, by marriage, acquire any interest in the property of the person whom he or she marries, nor become incapable of doing

Interests and powers not acquired nor lost by marriage.

* The definition of "High Court" has been added by the Probates and Letters of Administration Act (XIII of 1875), s. 1; but the portion italicized has been repealed in Lower Burma by the Lower Burma Courts Act (VI. of 1900).

Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.

Explanation I.—Nothing is an enjoyment within the meaning of this section when it has been had in pursuance of an agreement with the owner or occupier of the property over which the right is claimed, and it is apparent from the agreement that such right has not been granted as an easement, or, if granted as an easement, that it has been granted for a limited period, or subject to a condition on the fulfilment of which it is to cease.

Explanation II.—Nothing is an interruption within the meaning of this section unless where there is an actual cessation of the enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof, and of the person making or authorizing the same to be made.

Explanation III.—Suspension of enjoyment in pursuance of a contract between the dominant and servient owners is not an interruption within the meaning of this section.

Explanation IV.—In the case of an easement to pollute water, the said period of twenty years begins when the pollution first pre-judices perceptibly the servient heritage.

When the property over which a right is claimed under this section belongs to Government, this section shall be read as if, for the words "twenty years," the words "sixty years" were substituted.

Illustrations.

(a) A suit is brought in 1883 for obstructing a right of way. The defendant admits the obstruction but denies the right of way. The plaintiff proves that the right was peaceably and openly enjoyed by him claiming title thereto, as an easement and as of right, without interruption, from 1st January 1862 to 1st January 1882. The plaintiff is entitled to judgment

(b) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that, for a year of that time, the plaintiff was entitled to possession of the servient heritage as lessee thereof, and enjoyed the right as such lessee: The suit shall be dismissed, for the right of way has not been enjoyed "as an easement" for twenty years

(c) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that the plaintiff, on one occasion during the twenty years, had admitted that the

Illustration.

At the time of the birth of A, his father was domiciled in England : A's domicile of origin is in England, whatever may be the country in which he was born

8. The domicile of origin of an illegitimate child is in the country in which, at the time of his birth, his mother was domiciled.

Domicile of origin of illegitimate child

9. The domicile of origin prevails until a new domicile has been acquired.

10 A man acquires a new domicile by taking up his fixed habitation in a country which is not that of his domicile of origin.

Explanation—A man is not to be considered as having taken up his fixed habitation in British India merely by reason of his residing there in Her Majesty's civil or military service, or in the exercise of any profession or calling.

Illustrations.

(a) A, whose domicile of origin is in England, proceeds to British India, where he settles as a barrister or a merchant, intending to reside there during the remainder of his life. His domicile is now in British India.

(b) A, whose domicile is in England, goes to Austria, and enters the Austrian service, intending to remain in that service : A has acquired a domicile in Austria.

(c) A, whose domicile of origin is in France, comes to reside in British India under an engagement with the British Indian Government for a certain number of years. It is his intention to return to France at the end of that period. He does not acquire a domicile in British India.

(d) A, whose domicile is in England, goes to reside in British India, for the purpose of winding up the affairs of a partnership which has been dissolved, and with the intention of returning to England as soon as that purpose is accomplished. He does not, by such residence, acquire a domicile in British India, however long the residence may last.

(e) A, having gone to reside in British India under the circumstances mentioned in the last preceding illustration, afterwards alters his intention, and takes up his fixed habitation in British India. A has acquired a domicile in British India.

(f) A, whose domicile is in the French Settlement of Chandernagore, is compelled by political events to take refuge in Calcutta, and resides in

Illustrations.

(a) By the custom of a certain village every cultivator of village-land is entitled, as such, to graze his cattle on the common pasture. A, having become the tenant of a plot of uncultivated land in the village, breaks up and cultivates that plot. He thereby acquires an easement to graze his cattle in accordance with the custom.

(b) By the custom of a certain town no owner or occupier of a house can open a new window therein so as substantially to invade his neighbour's privacy. A builds a house in the town near B's house. A thereupon acquires an easement that B shall not open new windows in his house so as to command a view of the portions of A's house which are ordinarily excluded from observation, and B acquires a like easement with respect to A's house.

19. Where the dominant heritage is transferred, or devolves

Transfer of dominant heri- by act of parties, or by operation of law,
 tage passes easement. the transfer or devolution shall, unless
 a contrary intention appears, be deemed to pass the easement to
 the person in whose favour the transfer or devolution takes place.

Illustration.

A has certain land to which a right of way is annexed. A lets the land to B for twenty years. The right of way vests in B and his legal representatives so long as the lease continues.

CHAPTER III.

THE INCIDENTS OF EASEMENTS.

20. The rules contained in this Chapter are controlled by

Rules controlled by con- any contract between the dominant and
 tract or title. servient owners relating to the servient
 heritage, and by the provisions of the instrument or decree (if any)
 by which the easement referred to was imposed.

And when any incident of any customary easement is

Incidents of customary inconsistent with such rules, nothing in
 easements. this Chapter shall affect such incident.

21. An easement must not be used for any purpose not

Bar to use unconnected connected with the enjoyment of the
 with enjoyment. dominant heritage.

Illustrations.

(a) A, as owner of a farm Y, has a right of way over B's land to Y. Lying beyond Y, A has another farm Z, the beneficial enjoyment of which

Exception.—The wife's domicile no longer follows that of her husband if they be separated by the sentence of a competent Court, or if the husband is undergoing a sentence of transportation.

17. Except in the cases above provided for, a person can—
 Minor's acquisition of not, during minority, acquire a new
 new domicile. domicile.

18. An insane person cannot acquire a new domicile in
 Lunatic's acquisition of any other way than by his domicile
 new domicile. following the domicile of another person.

19. If a man dies leaving moveable property in British India,
 Succession to moveable in the absence of proof of any domicile
 property in British India in elsewhere, succession to the property is
 absence of proof of domi- regulated by the law of British India.
 cile elsewhere.

PART III.*

OF CONSANGUINITY.

20. Kindred or consanguinity is the connexion or relation
 Kindred or consanguinity of persons descended from the same
 stock or common ancestor.

21. Lineal consanguinity is that which subsists between two
 Lineal consanguinity persons, one of whom is descended in
 a direct line from the other, as between
 a man and his father, grandfather, and great-grandfather, and so
 upwards in the direct ascending line, or between a man, his son,
 grandson, great-grandson, and so downwards in the direct descend-
 ing line.

Every generation constitutes a degree, either ascending or descending.

A man's father is related to him in the first degree, and so likewise is his son, his grandfather and grandson in the second degree; his great-grandfather and great-grandson in the third.

* Part III does not apply to Parsis — See the Parsi Intestate Succession Act (XXI. of 1865), s. 8.

does not substantially increase the amount, or injuriously change the nature, of the pollution.

(d) A, a riparian owner, acquires, as against the lower riparian owners, a prescriptive right to pollute a stream by throwing saw-dust into it: This does not entitle A to pollute the stream by discharging into it poisonous liquor.

24. The dominant owner is entitled, as against the servient

owner, to do all acts necessary to secure the full enjoyment of the easement; but

such acts must be done at such time and in such manner as, without detriment to the dominant owner, to cause the servient owner as little inconvenience as possible, and the dominant owner must repair, as far as practicable, the damage (if any) caused by the act to the servient heritage.

Accessory rights.

Rights to do acts necessary to secure the full enjoyment of an easement are called accessory rights.

Illustrations

(a) A has an easement to lay pipes in B's land to convey water to A's cistern. A may enter and dig the land in order to mend the pipes, but he must restore the surface to its original state.

(b) A has an easement of a drain through B's land. The sewer with which the drain communicates is altered. A may enter upon B's land and alter the drain to adapt it to the new sewer, provided that he does not thereby impose any additional burden on B's land.

(c) A, as owner of a certain house, has a right of way over B's land. The way is out of repair, or a tree is blown down and falls across it: A may enter on B's land, and repair the way, or remove the tree from it.

(d) A, as owner of a certain field, has a right of way over B's land. B renders the way impassable. A may deviate from the way, and pass over the adjoining land of B, provided that the deviation is reasonable.

(e) A, as owner of a certain house, has a right of way over B's field. A may remove rocks to make the way.

(f) A has an easement of support from B's wall. The wall gives way: A may enter upon B's land, and repair the wall.

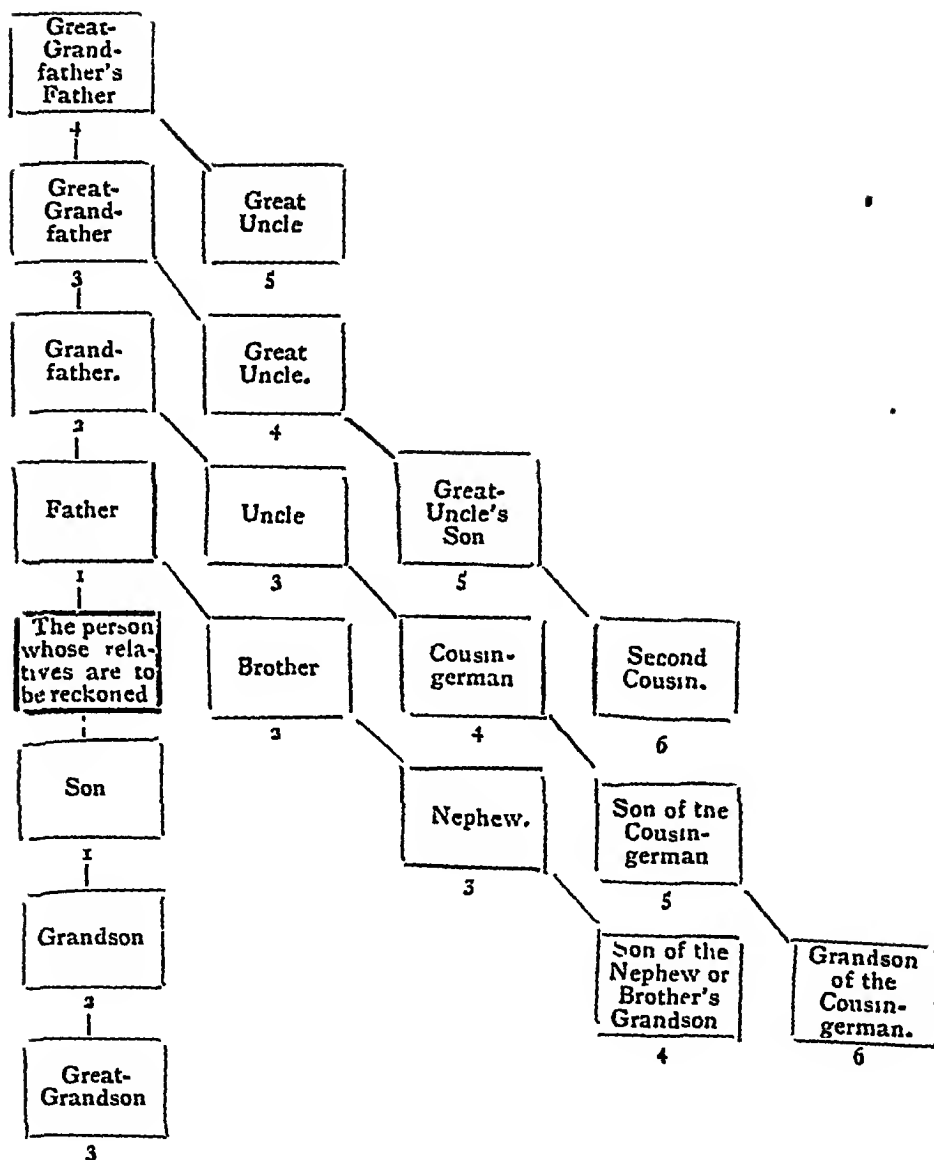
(g) A has an easement to have his land flooded by means of a dam in B's stream. The dam is half swept away by an inundation. A may enter upon B's land, and repair the dam.

25. The expenses incurred in constructing works, or making

repairs, or doing any other act necessary for the use or preservation of an easement, must be defrayed by the dominant owner.

Liability for expenses necessary for preservation of easement.

TABLE OF CONSANGUINITY.



In the absence of evidence as to such intention and purpose—

Right of way.

(a) a right of way of any one kind does not include a right of way of any other kind :

(b) the extent of a right to the passage of light or air to a certain window, door, or other opening, imposed by a testamentary or non-testamentary instrument, is the quantity of light or air that entered the opening at the time the testator died, or the non-testamentary instrument was made :

(c) the extent of a prescriptive right to the passage of light or air to a certain window, door, or other opening is that quantity of light or air which has been accustomed to enter that opening during the whole of the prescriptive period irrespectively of the purposes for which it has been used :

(d) the extent of a prescriptive right to pollute air or water is the extent of the pollution at the commencement of the period of user on completion of which the right arose ; and

(e) the extent of every other prescriptive right and the mode of its enjoyment must be determined by the accustomed user of the right

29. The dominant owner cannot, by merely altering or adding to the dominant heritage, substantially increase an easement.

Where an easement has been granted or bequeathed, so that its extent shall be proportionate to the extent of the dominant heritage, if the dominant heritage is increased by alluvion, the easement is proportionately increased ; and if the dominant heritage is diminished by diluvion, the easement is proportionately diminished :

Save as aforesaid, no easement is affected by any change in the extent of the dominant or the servient heritage.

Illustrations

(a) A, the owner of a mill, has acquired a prescriptive right to divert to his mill part of the water of a stream. A alters the machinery of his mill. He cannot thereby increase his right to divert water.

and the other half shall go to those who are of kindred to him in the order and according to the rules herein contained.

If he has left none who are of kindred to him, the whole of his property shall belong to his widow :

28. Where the intestate has left no widow, his property shall go to his lineal descendants or to those who are of kindred to him, not being lineal descendants, according to the rules herein contained ; and, if he has left none who are of kindred to him it shall go to the Crown.

PART V.*

OF THE DISTRIBUTION OF AN INTESTATE'S PROPERTY :

(a.)—Where he has left Lineal Descendants.

29. The rules for the distribution of the intestate's property (after deducting the widow's share, if he has left a widow) amongst his lineal descendants are as follow.—

30. Where the intestate has left surviving him a child or children, but no more remote lineal descendant through a deceased child, the property shall belong to his surviving child if there be only one, or shall be equally divided among all his surviving children.

31. Where the intestate has not left surviving him any child, but has left a grandchild or grandchildren, and no more remote descendant through a deceased grandchild, the property shall belong to his surviving grandchild if there be only one, or shall be equally divided among all his surviving grandchildren.

Illustrations.

(a) A has three children, and no more—John, Mary, and Henry. They all die before the father. John leaving two children, Mary three, and Henry four. Afterwards A dies intestate, leaving those nine grandchildren and no descendant of any deceased grandchild: Each of his grandchildren shall have one-ninth.

* Part V does not apply to Parsis —See the Parsi Intestate Succession Act (XXI. of 1865), s. 8.

CHAPTER IV.

THE DISTURBANCE OF EASEMENTS.

32. The owner or occupier of the dominant heritage is entitled to enjoy the easement without disturbance by any other person.

Illustration.

A, as owner of a house, has a right of way over B's land. C unlawfully enters on B's land, and obstructs A in his right of way. A may sue C for compensation, not for the entry, but for the obstruction.

33. The owner of any interest in the dominant heritage, or the occupier of such heritage, may institute a suit for compensation for the disturbance of the easement, or of any right accessory thereto, provided that the disturbance has actually caused substantial damage to the plaintiff.

Explanation I—The doing of any act likely to injure the plaintiff by affecting the evidence of the easement, or by materially diminishing the value of the dominant heritage, is substantial damage within the meaning of this section and section 34.

Explanation II—Where the easement disturbed is a right to the free passage of light passing to the openings in a house, no damage is substantial within the meaning of this section unless it falls within the First Explanation, or interferes materially with the physical comfort of the plaintiff or prevents him from carrying on his accustomed business in the dominant heritage as beneficially as he had done previous to instituting the suit.

Explanation III.—Where the easement disturbed is a right to the free passage of air to the openings in a house, damage is substantial within the meaning of this section if it interferes materially with the physical comfort of the plaintiff, though it is not injurious to his health.

Illustrations.

(a) A places a permanent obstruction in a path over which B, as tenant of C's house, has a right of way. This is substantial damage to C, for it may affect the evidence of his reversionary right to the easement.

(b.) A left no child, but left eight grandchildren, and two children of a deceased grandchild: The property is divided into nine parts, one of which is allotted to each grandchild; and the remaining one-ninth is equally divided between the two great-grandchildren.

(c) A has three children, John, Mary, and Henry. John dies leaving four children, and one of John's children dies leaving two children. Mary dies leaving one child. A afterwards dies intestate: One-third of his property is allotted to Henry, one-third to Mary's child; and one-third is divided into four parts, one of which is allotted to each of John's three surviving children, and the remaining part is equally divided between John's two grandchildren.

(b).—*Where the Intestate has left no Lineal Descendants.*

34. Where an intestate has left no lineal descendants, the Rules of distribution where intestate has left no lineal descendants. rules for the distribution of his property (after deducting the widow's share if he has left a widow) are as follow:—

Where intestate's father living.

35. If the intestate's father be living, he shall succeed to the property.

36. If the intestate's father is dead, but the intestate's mother is living, and there are also brothers or sisters of the intestate living, and there is no child living of any deceased brother or sister, the mother and each living brother or sister shall succeed to the property in equal shares.

Illustration.

A dies intestate survived by his mother and two brothers of the full blood, John and Henry, and a sister Mary, who is the daughter of his mother, but not of his father. The mother takes one-fourth, each brother takes one-fourth, and Mary, the sister of half-blood, takes one-fourth.

37. If the intestate's father is dead, but the intestate's mother is living, and if any brother or sister, and the child or children of any brother or sister who may have died in the intestate's lifetime, are also living, then the mother and each living brother or sister, and the living child or children of each deceased brother or sister, shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

(c) A and B, tenants of C, have permanent transferable interest in their respective holdings. A imposes on his holding an easement to draw water from a tank for the purpose of irrigating B's land. B enjoys the easement for twenty years. Then A's rent falls into arrear, and his interest is sold: B's easement is extinguished.

(d) A mortgages Sultanpur to B, and lawfully impleases an easement on the land in favour of C in accordance with the provisions of section 10. The land is sold to D in satisfaction of the mortgage-debt. The easement is not thereby extinguished.

38. An easement is extinguished when the dominant owner releases it, expressly or impliedly, to the servient owner.
Extinction by release.

Such release can be made only in the circumstances and to the extent in and to which the dominant owner can alienate the dominant heritage.

An easement may be released as to part only of the servient heritage.

Explanation I.—An easement is impliedly released—

(a) where the dominant owner expressly authorizes an act of a permanent nature to be done on the servient heritage, the necessary consequence of which is to prevent his future enjoyment of the easement, and such act is done in pursuance of such authority,

(b) where any permanent alteration is made in the dominant heritage of such a nature as to show that the dominant owner intended to cease to enjoy the easement in future.

Explanation II.—Mere non-user of an easement is not an implied release within the meaning of this section.

Illustrations

(a) A, B, and C are co-owners of a house to which an easement is annexed. A, without the consent of B and C, releases the easement. This release is effectual only as against A and his legal representative.

(b) A grants B an easement over A's land for the beneficial enjoyment of his house. B assigns the house to C. B then purports to release the easement. The release is ineffectual.

(c) A, having the right to discharge his eaves-droppings into B's yard, expressly authorizes B to build over this yard to a height which will interfere with the discharge. B builds accordingly. A's easement is extinguished to the extent of the interference.

(d) A, having an easement of light to a window, builds up that window with bricks and mortar so as to manifest an intention to abandon the easement permanently. The easement is impliedly released.

47. A father, whatever his age may be, may, by will, appoint a guardian or guardians for his child during minority.

Testamentary guardian.

48. A will or any part of a will, the making of which has been caused by fraud or coercion, or by such importunity as takes away the free agency of the testator, is void.

Will obtained by fraud, coercion, or importunity.

Illustrations

(a) A falsely and knowingly represents to the testator that the testator's only child is dead, or that he has done some uncutiful act, and thereby induces the testator to make a will in his (A's) favour, such will has been obtained by fraud, and is invalid

(b) A, by fraud and deception, prevails upon the testator to bequeath a legacy to him. The bequest is void.

(c) A, being a prisoner by lawful authority, makes his will. The will is not invalid by reason of the imprisonment

(d) A threatens to shoot B, or to burn his house, or to cause him to be arrested on a criminal charge unless he makes a bequest in favour of C. B, in consequence, makes a bequest in favour of C. The bequest is void, the making of it having been caused by coercion.

(e) A being of sufficient intellect, if undisturbed by the influence of others, to make a will, yet, being so much under the control of B that he is not a free agent, makes a will dictated by B. It appears that he would not have executed the will but for fear of B. The will is invalid

(f) A, being in so feeble a state of health as to be unable to resist importunity, is pressed by B to make a will of a certain purport, and does so merely to purchase peace, and in submission to B. The will is invalid.

(g.) A being in such a state of health as to be capable of exercising his own judgment and volition, B uses urgent intercession and persuasion with him to induce him to make a will of a certain purport. A, in consequence of the intercession, and persuasion, but in the free exercise of his judgment and volition, makes his will in the manner recommended by B. The will is not rendered invalid by the intercession and persuasion of B.

(h) A, with a view to obtaining a legacy from B, pays him attention and flatters him, and thereby produces in him a capricious partiality to A. B, in consequence of such attention and flattery, makes his will, by which he leaves a legacy to A. The bequest is not rendered invalid by the attention and flattery of A.

49. A will is liable to be revoked or altered by the maker of Will may be revoked or it at any time when he is competent to altered. dispose of his property by will.

44. An easement is extinguished where the servient herbage is, by superior force, so permanently altered that the dominant owner can no longer enjoy such easement :

Extinction on permanent alteration of servient herbage by superior force.

Provided that, where a way of necessity is destroyed by superior force, the dominant owner has a right to another way over the servient herbage, and the provisions of section 14 apply to such way.

Illustrations

(a) A grants to B, as the owner of a certain house, a right to fish in a river running through A's land. The river changes its course permanently, and runs through C's land. B's easement is extinguished.

(b) Access to a path over which A has a right of way is permanently cut off by an earthquake. A's right is extinguished.

Extinction by destruction of either herbage.

45. An easement is extinguished when either the dominant or the servient herbage is completely destroyed.

Illustration

A has a right of way over a road running along the foot of a sea-cliff. The road is washed away by a permanent encroachment of the sea. A's easement is extinguished.

46. An easement is extinguished when the same person becomes entitled to the absolute ownership of the whole of the dominant and servient heritages.

Extinction by unity of ownership.

Illustrations.

(a) A, as the owner of a house, has a right of way over B's field. A mortgages his house, and B mortgages his field, to C. Then C forecloses both mortgages, and becomes thereby absolute owner of both house and field. The right of way is extinguished.

(b) The dominant owner acquires only part of the servient herbage. The easement is not extinguished except in the case illustrated in section 41.

(c) The servient owner acquires the dominant herbage in connection with a third person. The easement is not extinguished.

(d) The separate owners of two separate dominant heritages jointly acquire the herbage which is servient to the two separate heritages. The easements are not extinguished.

(e) The joint owners of the dominant herbage jointly acquire the servient herbage. The easement is extinguished.

of eighteen years, dispose of his property by a will made as is mentioned in section 53.

Such wills are called privileged wills.

Illustrations.

(a) A, the surgeon of a regiment, is actually employed in an expedition. He is a soldier actually employed in an expedition, and can make a privileged will.

(b) A is at sea in a merchant-ship, of which he is the purser. He is a mariner, and, being at sea, can make a privileged will.

(c) A, a soldier, serving in the field against insurgents, is a soldier engaged in actual warfare, and as such can make a privileged will.

(d) A, a mariner of a ship in the course of a voyage, is temporarily on shore while she is lying in harbour. He is, in the sense of the words used in this clause, a mariner at sea, and can make a privileged will.

(e) A, an admiral who commands a naval force, but who lives on shore, and only occasionally goes on board his ship, is not considered as at sea, and cannot make a privileged will.

(f) A mariner serving on a military expedition, but not being at sea, is considered as a soldier, and can make a privileged will.

Mode of making, and rules for executing, privileged wills. **53.** Privileged wills may be in writing, or may be made by word of mouth.

The execution of them shall be governed by the following rules:—

First.—The will may be written wholly by the testator with his own hand. In such case it need not be signed nor attested.

Second.—It may be written wholly or in part by another person, and signed by the testator. In such case it need not be attested.

Third.—If the instrument purporting to be a will is written wholly or in part by another person, and is not signed by the testator, it shall be considered to be his will if it be shown that it was written by the testator's directions, or that he recognized it as his will.

If it appear on the face of the instrument that the execution of it in the manner intended by him was not completed, the instrument shall not, by reason of that circumstance, be invalid, provided that his non-execution of it can be reasonably ascribed to some cause other than the abandonment of the testamentary intentions expressed in the instrument.

ous, such rights shall, for the purposes of this section, be deemed to be a single easement.

Illustration.

A has, as annexed to his house, rights of way from the high road thither over the heritages X and Z and the intervening heritage Y. Before the twenty years expire, A exercises his right of way over X: His rights of way over Y and Z are not extinguished.

48. When an easement is extinguished, the rights (if any)

Extinction of accessory accessory thereto are also extinguished. rights.

Illustration

A has an easement to draw water from B's well. As accessory thereto he has a right of way over B's land to and from the well. The easement to draw water is extinguished under section 47. The right of way is also extinguished.

49. An easement is suspended when the dominant owner

Suspension of easement. becomes entitled to possession of the servient heritage for a limited interest therein, or when the servient owner becomes entitled to possession of the dominant heritage for a limited interest therein.

50. The servient owner has no right to require that an ease-

Servient owner not entitled to require continuance. ment be continued; and, notwithstanding the provisions of section 26, he is not entitled to compensation for damage caused to the servient heritage in consequence of the extinguishment or suspension of the easement if the dominant owner has given to the servient owner such notice as will enable him, without unreasonable expense, to protect the servient heritage from such damage.

Where such notice has not been given, the servient owner is

Compensation for damage caused by extinguishment. entitled to compensation for damage caused to the servient heritage in consequence of such extinguishment or suspension.

Illustration.

A, in exercise of an easement, diverts to his canal the water of B's stream. The diversion continues for many years, and during that time the bed of the stream partly fills up. A then abandons his easement, and restores the stream to its ancient course. B's land is consequently flooded. B sues A for compensation for the damage caused by the flooding. It is proved that A gave B a month's notice of his intention to abandon the

56. Every will shall be revoked by the marriage of the maker, except a will made in exercise of a power of appointment, when the property over which the power of appointment is exercised would not, in default of such appointment, pass to his or her executor or administrator, or to the person entitled in case of intestacy.

Explanation.—Where a man is invested with power to determine the disposition of property of which he is not the owner, he is said to have power to appoint such property.

57. No unprivileged will or codicil, nor any part thereof, shall be revoked otherwise than by marriage, or by another will or codicil, or by some writing declaring an intention to revoke the same, and executed in the manner in which an unprivileged will is hereinbefore required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

Illustrations

(a) A has made an unprivileged will. Afterwards A makes another unprivileged will which purports to revoke the first This is a revocation.

(b) A has made an unprivileged will. Afterwards A, being entitled to make a privileged will, makes a privileged will, which purports to revoke his unprivileged will This is a revocation.

58. No obliteration, interlineation, or other alteration made in any unprivileged will after the execution thereof shall have any effect, except so far as the words or meaning of the will shall have been thereby rendered illegible or undiscernible, unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the will; save that the will, as so altered, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the will opposite or near to such alteration or at the foot or end of, or opposite to, a memorandum referring to such alteration, and written at the end or some other part of the will.

59. A privileged will or codicil may be revoked by the testator by an unprivileged will or codicil, or by any act expressing an intention to

54. The grant of a license may be express or implied from the conduct of the grantor, and an agreement which purports to create an easement, but is ineffectual for that purpose, may operate to create a license.

55. All licenses necessary for the enjoyment of any interest, or the exercise of any right, are implied in the constitution of such interest or right. Such licenses are called accessory licenses.

Illustration.

A sells the trees growing on his land to B. B is entitled to go on the land, and take away the trees

56. Unless a different intention is expressed or necessarily implied, a license to attend a place of public entertainment may be transferred by the licensee; but, save as aforesaid, a license cannot be transferred by the licensee, or exercised by his servants or agents

Illustrations.

(a.) A grants B a right to walk over A's field, whenever he pleases. The right is not annexed to any immoveable property of B: The right cannot be transferred.

(b.) The Government grants B a license to erect and use temporary grain-sheds on Government land. In the absence of express provision to the contrary, B's servants may enter on the land for the purpose of erecting sheds, erect the same, deposit grain therein, and remove grain therefrom.

57. The grantor of a license is bound to disclose to the licensee any defect in the property affected by the license likely to be dangerous to the person or property of the licensee, of which the grantor is, and the licensee is not, aware.

58. The grantor of a license is bound not to do anything likely to render the property affected by the license dangerous to the person or property of the licensee.

59. When the grantor of the license transfers the property affected thereby, the transferee is not, as such, bound by the license.

stances of the testator and of his family, and into every fact, a knowledge of which may conduce to the right application of the words which the testator has used.

Illustrations.

(a.) A, by his will, bequeaths 1,000 rupees to his eldest son,* or to his youngest grandchild, or to his cousin Mary. A Court may make inquiry in order to ascertain to what person the description in the will applies.

(b.) A, by his will, leaves to B "his estate called Black Acre." It may be necessary to take evidence in order to ascertain what is the subject-matter of the bequest, that is to say, what estate of the testator's is called Black Acre.

(c.) A, by his will, leaves to B "the estate which he purchased of C." It may be necessary to take evidence in order to ascertain what estate the testator purchased of C.

63. Where the words used in the will to designate or describe a legatee, or a class of legatees, sufficiently show what is meant, an error in the name or description shall not prevent the legacy from taking effect.

A mistake in the name of a legatee may be corrected by a description of him, and a mistake in the description of a legatee may be corrected by the name.

Illustrations.

(a.) A bequeaths a legacy "to Thomas, the second son* of his brother John." The testator has an only brother, named John, who has no son named Thomas, but has a second son whose name is William. William shall have the legacy.

(b.) A bequeaths a legacy "to Thomas, the second son of his brother John." The testator has an only brother, named John, whose first son is named Thomas, and whose second son is named William. Thomas shall have the legacy.

(c.) The testator bequeaths his property "to A and B, the legitimate children of C." C has no legitimate child, but has two illegitimate children, A and B. The bequest to A and B takes effect, although they are illegitimate.

* In applying ss. 62, 63, 93, 95, 98, 99, 100, 101, 102, and 103 of the said Succession Act to wills and codicils made under this Act (XXI. of 1870), the words, "son," "sons," "child," and "children," shall be deemed to include an adopted child; and the word "grandchildren" shall be deemed to include the children, whether adopted or natural-born, of a child, whether adopted or natural-born; and the expression, "daughter-in-law" shall be deemed to include the wife of an adopted son.—Hindu Wills Act (XXI. of 1870), s. 6.

(1) in the case of an accessory license, when the interest or right to which it is accessory ceases to exist. *

63. Where a license is revoked, the licensee is entitled to a reasonable time to leave the property affected thereby, and to remove any goods which he has been allowed to place on such property.

64. Where a license has been granted for a consideration, and the licensee, without any fault of his own is evicted by the grantor before he has fully enjoyed, under the license, the right for which he contracted, he is entitled to recover compensation from the grantor

perty, and it shall not be lawful to reject any part of the description as erroneous, because the testator had other property to which such part of the description does not apply.

Explanation.—In judging whether a case falls within the meaning of this section, any words which would be liable to rejection under section 65 are to be considered as struck out of the will.

Illustrations.

(a.) A bequeaths to B "his marsh-lands lying in L, and in the occupation of X." The testator had marsh-lands lying in L, some of which were in the occupation of X, and some not in the occupation of X. The bequest shall be considered as limited to such of the testator's marsh-lands lying in L as were in the occupation of X.

(b.) A bequeaths to B "his marsh-lands lying in L, and in the occupation of X, comprising 1,000 bighas of land." The testator had marsh-lands lying in L, some of which were in the occupation of X, and some not in the occupation of X. The measurement is wholly inapplicable to the marsh-lands of either class, or to the whole taken together. The measurement shall be considered as struck out of the will, and such of the testator's marsh-lands lying in L as were in the occupation of X shall alone pass by the bequest.

67. Where the words of the will are unambiguous, but it is

<p>Extrinsic evidence admissible in cases of latent ambiguity</p>	<p>found by extrinsic evidence that they admit of applications, one only of which can have been intended by the testator,</p>
<p>extrinsic evidence may be taken to show which of these applications was intended.</p>	

Illustrations.

(a.) A man, having two cousins of the name of Mary, bequeaths a sum of money to "his cousin Mary." It appears that there are two persons, each answering the description in the will. That description, therefore, admits of two applications, only one of which can have been intended by the testator. Evidence is admissible to show which of the two applications was intended.

(b.) A, by his will, leaves to B "his estate called Sultanpur Khurd." It turns out that he had two estates called Sultanpur Khurd: Evidence is admissible to show which estate was intended.

68. Where there is an ambiguity or deficiency on the face

<p>Extrinsic evidence inadmissible in cases of patent ambiguity or deficiency.</p>	<p>of the will, no extrinsic evidence as to the intentions of the testator shall be admitted.</p>
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L. The general words, " all his marsh-lands in L," are restricted by the gift to A. A takes the whole of the farm in the occupation of B, including that portion of the farm which consists of marsh-lands in L.

(b) The testator (a sailor on ship-board) bequeathed to his mother his gold ring, buttons, and chest of clothes, and to his friend A (a ship-mate) his red box, clasp-knife, and all things not before bequeathed. The testator's share in a house does not pass to A under this bequest.

(c) A, by his will, bequeathed to B all his house-hold furniture, plate, linen, china books, pictures, and all other goods of whatever kind; and afterward bequeathed to B a specified part of his property. Under the first bequest, B is entitled only to such articles of the testator's as are of the same nature with the articles therein enumerated.

71. Where a clause is susceptible of two meanings, according to one of which it has some effect, and according to the other it can have none, the former is to be preferred.

72. No part of a will is to be rejected as destitute of meaning if it is possible to put a reasonable construction upon it.

73. If the same words occur in different parts of the same will, they must be taken to have been used everywhere in the same sense, unless there appears an intention to the contrary.

74. The intention of the testator is not to be set aside, because it cannot take effect to the full extent, but effect is to be given to it as far as possible.

Illustration.

The testator, by a will made on his death-bed, bequeathed all his property to C D for life, and after his decease to a certain hospital. The intention of the testator cannot take effect to its full extent, because the gift to the hospital is void under section 105, but it shall take effect so far as regards the gift to C D.

75. Where two clauses or gifts in a will are irreconcilable, so that they cannot possibly stand together, the last shall prevail.

Illustrations.

(a) The testator, by the first clause of his will, leaves his estate of Ramnagar "to A," and, by the last clause of his will, leaves it "to B, and not to A." B shall have it.

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45. Opinions of experts

80. Where a bequest is made to the "heirs" or "right heirs," or "relations," or "nearest relations," or "family," or "kindred," or "nearest of kin," or "next of kin," of a particular person, without any qualifying terms, and the class so designated forms the direct and independent object of the bequest, the property bequeathed shall be distributed as if it had belonged to such person, and he had died intestate in respect of it leaving assets for the payment of his debts independently of such property.

Illustrations.

(a) A leaves his property "to his own nearest relations." The property goes to those who would be entitled to it if A had died intestate, leaving assets for the payment of his debts independently of such property.

(b.) A bequeaths 10,000 rupees "to B for his life, and after the death of B to his own right heirs." The legacy after B's death belongs to those who would be entitled to it if it had formed part of A's unbequeathed property,

(c) A leaves his property to B; but, if B dies before him, to B's next of kin. B dies before A. The property devolves as if it had belonged to B, and he had died intestate, leaving assets for the payment of his debts, independently of such property.

(d.) A leaves 10 000 rupees "to B for his life, and, after his decease to the heirs of C." The legacy goes as if it had belonged to C, and he had died intestate, leaving assets for the payment of his debts independently of the legacy.

81. Where a bequest is made to the "representatives," or "legal representatives," or "personal representatives," &c., of particular person, and the class so designated forms the direct and independent object of the bequest, the property bequeathed shall be distributed as if it had belonged to such person, and he had died intestate in respect of it.

Illustration.

A bequest is made to the "legal representative" of A. A has died intestate and insolvent. B is his administrator. B is entitled to receive the legacy, and shall apply it in the first place to the discharge of such part of A's debts as may remain unpaid; if there be any surplus, B shall pay it to those persons who, at A's death, would have been entitled to receive any property of A's which might remain after payment of his debts, or to the representatives of such persons.

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- 92. Exclusion of evidence of oral agreement
- 93. Exclusion of evidence to explain or amend ambiguous document
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- 102. On whom burden of proof lies
- 103. Burden of proof as to particular fact.
- 104. Burden of proving fact to be proved to make evidence admissible
- 105. Burden of proving that case of accused comes within exceptions
- 106. Burden of proving fact specially within knowledge.
- 107. Burden of proving death of person known to have been alive within thirty years
- 108. Burden of proving that person is alive who has not been heard of for seven years
- 109. Burden of proof as to relationship in the cases of partners, landlord, and tenant, principal and agent
- 110. Burden of proof as to ownership
- 111. Proof of good faith in transactions where one party is in relation of active confidence
- 112. Birth during marriage conclusive proof of legitimacy
- 113. Proof of cession of territory
- 114. Court may presume existence of certain facts

CHAPTER VIII

ESTOPPEL.

- 115. Estoppel

Illustrations.

(a) A bequest is made—

to A and his children,
to A and his children by his present wife,
to A and his heirs,
to A and the heirs of his body,
to A and the heirs male of his body,
to A and the heirs female of his body,
to A and his issue,
to A and his family,
to A and his descendants,
to A and his representatives,
to A and his personal representatives,
to A, his executors, and administrators :

In each of these cases, A takes the whole interest which the testator had in the property.

(b) A bequest is made to A and his brothers A and his brothers are jointly entitled to the legacy

(c) A bequest is made to A for life, and after his death to his issue, At the death of A the property belongs in equal shares to all persons who shall then answer the description of issue of A.

85* Where a bequest is made to a class of persons under a Bequest to class of persons under general description only. general description only, no one to whom the words or the description are not, in their ordinary sense, applicable shall take the legacy.

86. The word "children" in a will applies only to lineal descendants in the first degree, the word "grandchildren" applies only to lineal descendants in the second degree, of the person whose "children," or "grandchildren" are spoken of;

the words "nephews" and "nieces" apply only to children of brothers or sisters;

* S. 85 applies to the wills of Hindus, &c., in the Lower Provinces of Bengal and in the towns of Madras and Bombay.—See the Hindu Wills Act (XXI. of 1870), s. 2.

SECTIONS

- 159 Refreshing memory
When witness may use copy
of document to refresh
memory.
- 160. Testimony to facts stated in
document mentioned in sec-
tion 159
- 161 Right of adverse party as to
writing used to refresh memory.
- 162 Production of documents
Translation of documents
- 163 Giving, as evidence of docu-
ment called for and produce
on notice.
- 164. Using as evidence, of document
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fused on notice

SECTIONS

- 165 Judge's power to put questions
or order production
- 166 Power of jury or assessors to
put questions

CHAPTER XI**OF IMPROPER ADMISSION AND
REJECTION OF EVIDENCE.**

- 167 No new trial for improper ad-
mission or rejection of evi-
dence.

SCHEDULE.**ENACTMENTS REPEALED**

of 1865]

(e.) A bequeathed a legacy to "the children of B." B never had any legitimate child. C and D had, at the date of the will, acquired the reputation of being children of B. After the date of the will, and before the death of the testator, E and F were born, and acquired the reputation of being children of B. Only C and D are objects of the bequest.

(f.) A makes a bequest in favour of his child by a certain woman, not his wife. B had acquired, at the date of the will, the reputation of being the child of A by the woman designated. B takes the legacy.

(g.) A makes a bequest in favour of his child to be born of a woman, who never becomes his wife. The bequest is void.

(h.) A makes a bequest in favour of the child of which a certain woman, not married to him, is pregnant. The bequest is valid.

88* Where a will purports to make two bequests to the same

Rules of construction person, and a question arises whether where a will purports to make the testator intended to make the second two bequests to same person bequest instead of, or in addition to, the first, if there is nothing in the will to show what he intended, the following rules shall prevail in determining the construction to be put upon the will:—

First.—If the same specific thing is bequeathed twice to the same legatee in the same will, or in the will, and again in a codicil, he is entitled to receive that specific thing only.

Second.—Where one and the same will or one and the same codicil purports to make, in two places, a bequest to the same person of the same quantity or amount of anything, he shall be entitled to one such legacy only.

Third.—Where two legacies of unequal amount are given to the same person in the same will or in the same codicil, the legatee is entitled to both.

Fourth.—Where two legacies, whether equal or unequal in amount, are given to the same legatee, one by a will and the other by a codicil, or each by a different codicil, the legatee is entitled to both legacies.

Explanation.—In the four last rules, the word "will" does not include a codicil.

Illustrations.

(a.) A, having ten shares, and no more, in the Bank of Bengal, made his will, which contains near its commencement the words, "I bequeath my

* This section and s. 88-103 (both inclusive) apply to the wills of Hindus, &c., in the Lower Provinces of Bengal, and in the towns of Madras and Bombay.—See the Hindu Wills Act (XXI. of 1870), s. 2.

tial,* but not to affidavits† presented to any Court or officer, nor to proceedings before an arbitrator; and it shall come into force on the first day of September 1872.

Commencement of Act.

Repeal of enactments.

2. On and from that day the following laws shall be repealed:—

- (1) all rules of evidence not contained in any Statute, Act, or Regulation in force in any part of British India;
- (2) all such rules, laws, and regulations as have acquired the force of law under the twenty-fifth section of "The Indian Councils Act, 1861,"‡ in so far as they relate to any matter herein provided for; and
- (3) the enactments mentioned in the schedule hereto, to the extent specified in the third column of the said schedule.

But nothing herein contained shall be deemed to affect any provision of any Statute, Act, or Regulation in force in any part of British India, and not hereby expressly repealed.

3. In this Act the following words and expressions are used

Interpretation-clause

in the following senses unless a contrary intention appears from the context:—

Pt. I, p 505) The District of Lohárdagá included at this time the present District of Palamau, which was separated in 1894

So much of this Act as relates to the General Clauses Act (I. of 1868) was repealed by the General Clauses Act (X. of 1897)

* But see the Army Act (44 & 45 Vict., c 58), s 127, which is as follows:—

"A Court-martial under this Act shall not, as respects the conduct of its proceedings, or the reception or rejection of evidence, or as respects any other matter or thing whatsoever, be subject to the provisions of the Indian Evidence Act, 1872, or to any Act, law, or ordinance of any Legislature whatsoever, other than the Parliament of the United Kingdom"

Act I of 1872 is (subject to such modifications as the Governor-General in Council may direct) applicable to all proceedings before Indian Marine Courts—See the Indian Marine Act (XIV of 1887), s 68

† The Civil Procedure Code regulates matters to which affidavits are confined—See Act XIV of 1882, ss 104 to 197, and s 647; see also the Code of Criminal Procedure (Act V of 1898), s 539.

‡ 24 & 25 Vict., c 67

(c) A bequeaths all his property to B, except certain stocks and funds which he bequeaths to C. B is the residuary legatee.

90. Under a residuary bequest, the legatee is entitled to all property to which residuary legatee entitled. property belonging to the testator at the time of his death of which he has not made any other testamentary disposition which is capable of taking effect.

Illustration.

A, by his will, bequeaths certain legacies, one of which is void under section 105, and another lapses by the death of the legatee. He bequeaths the residue of his property to B. After the date of his will, A purchases a zemindari, which belongs to him at the time of his death. B is entitled to the two legacies and the zemindari as part of the residue.

91 If a legacy be given in general terms, without specifying Time of vesting of legacy the time when it is to be paid, the legatee in general terms has a vested interest in it from the day of the death of the testator, and, if he dies without having received it, it shall pass to his representatives.

92 If the legatee does not survive the testator, the legacy In what case legacy lapses cannot take effect, but shall lapse and form part of the residue of the testator's property, unless it appear by the will that the testator intended that it should go to some other person.

In order to entitle the representatives of the legatee to receive the legacy, it must be proved that he survived the testator.

Illustrations.

(a.) The testator bequeaths to B "500 rupees which B owes him." B dies before the testator. The legacy lapses.

(b) A bequest is made to A and his children.* A dies before the testator, or happens to be dead when the will is made. The legacy to A and his children lapses.

(c) A legacy is given to A, and, in case of his dying before the testator to B. A dies before the testator. The legacy goes to B.

(d) A sum of money is bequeathed to A for life, and after his death to B. A dies in the lifetime of the testator, B survives the testator. The bequest to B takes effect.

* See the Hindu Wills Act (XXI. of 1870), s. 6 (which is reproduced as foot-note at p. 23, *supra*).

Illustrations.

A is accused of the murder of B.

At his trial the following facts may be in issue —

that A caused B's death ,

that A intended to cause B's death ;

that A had received grave and sudden provocation from B ,

that A, at the time of doing the act which caused B's death, was, by reason of unsoundness of mind, incapable of knowing its nature.

"Document"* means any matter expressed or described upon any substance by means of letters, figures,

"Document." or marks, or by more than one of those

means, intended to be used, or which may be used, for the purpose of recording that matter.

Illustrations

A writing† is a document.

Words printed, lithographed or photographed are documents

A map or plan is a document.

An inscription on a metal plate or stone is a document

A caricature is a document

"Evidence."

"Evidence" means and includes—

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under enquiry :

such statements are called oral evidence ;

(2) all documents produced for the inspection of the Court .

such documents are called documentary evidence

A fact is said to be proved when, after considering the matters

"Proved." before it, the Court either believes it to exist, or considers its existence so probable

that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

* Cf. s 29 of the Indian Penal Code (Act XLV of 1860) and s 3 (16) of the General Clauses Act (X of 1897)

† Cf. definition of "written," s 2, Act XIV. of 1882, and "writing," s. 3 (58), the General Clauses Act (X of 1897), and of both in s 21, the Indian Stamp Act (I of 1879), as modified up to 1st November 1895, as published by the Legislative Department.

See also "write," s 4 of the Inventions and Designs Act (V of 1888).

A's beating B with the club,
 A's causing B's death by such beating,
 A's intention to cause B's death.

* (b) A suitor does not bring with him, and have in readiness for production at the first hearing of the case, a bond on which he relies. This section does not enable him to produce the bond or prove its contents at a subsequent stage of the proceedings, otherwise than in accordance with the conditions prescribed by the Code of Civil Procedure.

6. Facts which, though not in issue, are so connected with a Relevancy of facts forming fact in issue as to form part of the same part of same transaction. transaction, are relevant, whether they occurred at the same time and place, or at different times and places.

Illustrations

(a) A is accused of the murder of B by beating him. Whatever was said or done by A or B or by the bystanders at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.

(b) A is accused of waging war against the Queen by taking part in an armed insurrection in which property is destroyed, troops are attacked, and jails are broken open. The occurrence of these facts is relevant as forming part of the general transaction, though A may not have been present at all of them.

(c) A sues B for a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained, are relevant facts, though they do not contain the libel itself.

(d) The question is whether certain goods ordered from B were delivered to A. The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.

7. Facts which are the occasion, cause, or effect, immediate Facts which are occasion, or otherwise, of relevant facts or facts in cause, or effect of facts in issue, or which constitute the state of issue. things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant.

Illustrations

(a.) The question is, whether A robbed B.

The facts that, shortly before the robbery, B went to a fair with money in his possession, and that he showed it, or mentioned the fact that he had it, to third persons, are relevant.

* See now Act XIV. of 1882.

dual, but his possession of it is deferred until a time later than the death of the testator by reason of a prior bequest or otherwise, and if a person answering the description is alive at the death of the testator, or comes into existence between that event and such later time, the property shall, at such later time, go to that person, or, if he be dead, to his representatives.

Illustrations.

(a) A bequeaths 1,000 rupees to the eldest son* of B. At the death of the testator, B has no son. The bequest is void.

(b) A bequeaths 1,000 rupees to B for life, and after his death to the eldest son of C. At the death of the testator, C had no son. Afterwards, during the life of B, a son is born to C. Upon B's death, the legacy goes to C's son.

(c) A bequeaths 1,000 rupees to B for life, and after his death to the eldest son of C. At the death of the testator, C had no son; afterwards, during the life of B, a son named D is born to C. D dies, then B dies. The legacy goes to the representative of D.

(d) A bequeaths his estate of Green Acre to B for life, and at his decease to the eldest son* of C. Up to the death of B, C has had no son. The bequest to C's eldest son is void.

(e) A bequeaths 1,000 rupees to the eldest son* of C, to be paid to him after the death of B. At the death of the testator, C has no son, but a son is afterwards born to him during the life of B, and is alive at B's death. C's son is entitled to the 1,000 rupees.

10. Where a bequest is made to a person not in existence at the time of the testator's death, subject to a prior bequest contained in the will, the later bequest shall be void unless it comprises a whole of the remaining interest of the testator in the thing bequeathed.

Bequest to a person not in existence at the testator's death, subject to a prior bequest, the later bequest shall be void unless it comprises a whole of the remaining interest of the testator in the thing bequeathed.

Illustrations.

(a) A property is bequeathed to A for his life, and after his death to his eldest son. A dies, and after the death of the latter, to his eldest son. At the time of the testator's death, A has no son. Here the bequest to A's eldest son is void. It is not a case of the whole interest that remains to the testator. The bequest to A's eldest son for his life is void.

(b) A property is bequeathed to A for his life, and after his death to his daughters. A survives the testator. A has daughters, some of whom were

* See the Indian Wills Act (XXI of 1870), s. 6 (which is reproduced as foot-note 23, *supra*)

he consulted vakils in reference to making the will, and that he caused drafts of other wills to be prepared, of which he did not approve, are relevant.

(e) A is accused of a crime

The facts that, either before, or at the time of, or after, the alleged crime, A provided evidence which would tend to give to the facts of the case an appearance favourable to himself, or that he destroyed or concealed evidence, or prevented the presence, or procured the absence, of persons who might have been witnesses or suborned persons to give false evidence respecting it, are relevant.

(f) The question is, whether A robbed B :

The facts that, after B was robbed, C said in A's presence—"The police are coming to look for the man who robbed B," and that immediately afterwards A ran away, are relevant

(g) The question is, whether A owes B rupees 10,000 .

The facts that A asked C to lend him money, and that D said to C in A's presence and hearing, "I advise you not to trust A, for he owes B 10,000 rupees," and that A went away without making any answer, are relevant facts

(h) The question is, whether A committed a crime .

The fact that A absconded after receiving a letter warning him that inquiry was being made for the criminal, and the contents of the letter, are relevant.

(i.) A is accused of a crime

The facts that, after the commission of the alleged crime, he absconded or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant.

(j) The question is, whether A was ravished

The facts that, shortly after the alleged rape, she made a complaint relating to the crime, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that, without making a complaint, she said that she had been ravished, is not relevant as conduct under this section, though it may be relevant—

as a dying declaration under section 32, clause (1), or

as corroborative evidence under section 157

(k.) The question is, whether A was robbed.

The fact that, soon after the alleged robbery, he made a complaint relating to the offence, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that he said he had been robbed, without making any complaint, is not relevant as conduct under this section, though it may be relevant—

as a dying declaration under section 32, clause (1), or

as corroborative evidence under section 157.

Illustrations.

(a) A sum of money is bequeathed to A, to be paid to him at the age of 18, and, if he shall die before he attains that age, to B. A takes a vested interest in the legacy, subject to be divested and to go to B in case A shall die under 18.

(b) An estate is bequeathed to A, with a proviso that, if A shall dispute the competency of the testator to make a will, the estate shall go to B. A disputes the competency of the testator to make a will. The estate goes to B.

(c) A sum of money is bequeathed to A for life, and after his death to B, but, if B shall then be dead, leaving a son, such son is to stand in the place of B. B takes a vested interest in the legacy, subject to be divested if he dies leaving a son in A's lifetime.

(d) A sum of money is bequeathed to A and B, and if either should die during the life of C, then to the survivor living at the death of C. A and B die before C. The gift over cannot take effect, but the representative of A takes one-half of the money, and the representative of B takes the other half.

(e) A bequeaths to B the interest of a fund for life, and directs the fund to be divided at her death equally among her three children, or such of them as shall be living at her death. All the children of B die in B's lifetime. The bequest over cannot take effect, but the interests of the children pass to their representatives.

119. An ulterior bequest of the kind contemplated by the Condition must be strictly fulfilled. — last preceding section cannot take effect unless the condition is strictly fulfilled.

Illustrations.

(a) A legacy is bequeathed to A with a proviso that, if he marries without the consent of B, C, and D, the legacy shall go to E. D dies. Even if A marries without the consent of B and C, the gift to E does not take effect.

(b) A legacy is bequeathed to A with a proviso that, if he marries without the consent of B, the legacy shall go to C. A marries with the consent of B. He afterwards becomes a widower, and marries again without the consent of B. The bequest to C does not take effect.

(c) A legacy is bequeathed to A, to be paid at 18 or marriage, with a proviso that, if A dies under 18 or marries without the consent of B, the legacy shall go to C. A marries under 18 without the consent of B. The bequest to C takes effect.

Original bequest not affected by invalidity of second.

120. If the ulterior bequest be not valid, the original bequest is not affected by it.

10. Where there is reasonable ground to believe that two or

Things said or done by more persons have conspired together to commit an offence, or an actionable wrong, anything said, done, or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well as for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

Illustrations

Reasonable ground exists for believing that A has joined in a conspiracy to wage war against the Queen.

The facts that B procured arms in Europe for the purpose of the conspiracy, C collected money in Calcutta for a like object, D persuaded persons to join the conspiracy in Bombay, E published writings advocating the object in view at Agra, and F transmitted from Delhi to G at Cabul the money which C had collected at Calcutta, and the contents of a letter written by H giving an account of the conspiracy, are each relevant, both to prove the existence of the conspiracy, and to prove A's complicity in it, although he may have been ignorant of all of them, and although the persons by whom they were done were strangers to him, and although they may have taken place before he joined the conspiracy, or after he left it

When facts not otherwise relevant become relevant.

11. Facts not otherwise relevant are relevant—

- (1) if they are inconsistent with any fact in issue or relevant fact;
- (2) if, by themselves or in connection with other facts, they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.*

Illustrations.

(a) The question is, whether A committed a crime at Calcutta on a certain day

The fact that, on that day, A was at Lahore, is relevant

The fact that, near the time when the crime was committed A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant.

(b) The question is, whether A committed a crime :

* 11 Bom. H. C. R. 90.

123. Where a bequest is made with a condition superadded

Result of legatee rendering impossible or indefinitely postponing act for which no time specified, and on non-performance of which subject-matter to go over

that, unless the legatee shall perform a certain act, the subject-matter of the bequest shall go to another person, or the bequest shall cease to have effect, but no time is specified for the performance of the act, if the legatee takes any step which renders impossible or indefinitely postpones the performance of the act required, the legacy shall go as if the legatee had died without performing such act.

Illustrations.

[BLSA (a) A bequest is made to A with a proviso that, unless he enters the army, the legacy shall go over to B. A takes holy orders, and thereby renders it impossible that he should fulfil the condition. B is entitled to receive the legacy.

(b) A bequest is made to A, with a proviso that it shall cease to have any effect if he does not marry B's daughter. A marries a stranger, and thereby indefinitely postpones the fulfilment of the condition. The bequest ceases to have effect.

124. Where the will requires an act to be performed by the

Performance of condition, precedent or subsequent, within specified time.

legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed, or as a condition upon the non-fulfilment of which the subject-matter of the bequest is to go over to another person, or the bequest is to cease to have effect, the act must be performed within the time specified unless the performance of it be prevented by fraud, in which case such further

Further time in case of fraud. time shall be allowed as shall be requisite to make up for the delay caused by such fraud.

* *Explanation 2.*—But, where, upon the trial of a person accused of an offence, the previous commission by the accused of an offence is relevant within the meaning of this section, the previous conviction of such person shall also be a relevant fact †

Illustrations.

(a) A is accused of receiving stolen goods knowing them to be stolen. It is proved that he was in possession of a particular stolen article

The fact that, at the same time, he was in possession of many other stolen articles, is relevant, as tending to show that he knew each and all of the articles of which he was in possession to be stolen.

1 (b) A is accused of fraudulently delivering to another person a counterfeit coin, which, at the time when he delivered it, he knew to be counterfeit

The fact that, at the time of its delivery, A was possessed of a number of other pieces of counterfeit coin, is relevant

The fact that A had been previously convicted of delivering to another person as genuine a counterfeit coin knowing it to be counterfeit, is relevant §

(c) A sues B for damage done by a dog of B's which B knew to be ferocious.

The facts that the dog had previously bitten X, Y, and Z, and that they had made complaints to B, are relevant

(d) The question is, whether A, the acceptor of a bill of exchange, knew that the name of the payee was fictitious.

The fact that A had accepted other bills drawn in the same manner before they could have been transmitted to him by the payee if the payee had been a real person is relevant as showing that A knew that the payee was a fictitious person.

(e) A is accused of defaming B by publishing an imputation intended, to harm the reputation of B.

The fact of previous publications by A respecting B, showing ill-will on the part of A towards B, is relevant, as proving A's intention to harm B's reputation by the particular publication in question.

The facts that there was no previous quarrel between A and B, and that A repeated the matter complained of as he heard it, are relevant, as showing that A did not intend to harm the reputation of B

* These *Explanations* have been substituted for the original by the Indian Evidence Act (1872) Amendment Act (III of 1891), s 1 (1)

† See the Code of Criminal Procedure Act (V of 1898), s 31.

‡ The present III (b) has been substituted for the original by the Indian Evidence Act (1872) Amendment Act (III of 1891), s 1 (2)

§ Compare s 311 of the Code of Criminal Procedure (Act V of 1893).

fund, or so much of it as has not been exhausted upon the objects contemplated by the will, remains a part of the estate of the testator.

Illustrations.

(a) A directs that his trustees shall invest a sum of money in a particular way, and shall pay the interest to his son for life, and, at his death, shall divide the principal among his children - the son dies without having ever had a child. The fund, after the son's death, belongs to the estate of the testator.

(b) A bequeaths the residue of his estate to be divided equally among his daughters, with a direction that they are to have the interest only during their lives, and that, at their decease, the fund shall go to their children. The daughters have no children. The fund belongs to the estate of the testator.

PART XVIII.*

OF BEQUESTS TO AN EXECUTOR.

128. If a legacy is bequeathed to a person who is named an executor of the will, he shall not take the legacy unless he proves the will, or otherwise manifests an intention to act as executor.

Legatee named as executor cannot take unless he shows intention to act as executor.

Illustration.

A legacy is given to A, who is named an executor. A orders the funeral according to the directions contained in the will, and dies a few days after the testator, without having proved the will : A has manifested an intention to act as executor.

* Part XVIII. applies to the wills of Hindus, Jainas, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay.—See the Hindu Wills Act (XXI. of 1870), s. 2.

The fact that B's attention was drawn on other occasions to the defect of that particular carriage is relevant.

The fact that B was habitually negligent about the carriages which he let to hire is irrelevant.

(o.) A is tried for the murder of B by intentionally shooting him dead.

The fact that A on other occasions, shot at B, is relevant, as showing his intention to shoot B.

The fact that A was in the habit of shooting at people with intent to murder them is irrelevant.

(p) A is tried for a crime

The fact that he said something indicating an intention to commit that particular crime is relevant.

The fact that he said something indicating a general disposition to commit crimes of that class is irrelevant.

15. When there is a question whether an act was accidental or intentional, 'or done with a particular knowledge or intention,'* the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

Facts bearing on question whether act was accidental or intentional, or done with a particular knowledge or intention.

Illustrations.

(a) A is accused of burning down his house in order to obtain money for which it is insured.

The facts that A lived in several houses successively, each of which he insured, in each of which a fire occurred, and after each of which fires A received payment from a different insurance office, are relevant, as tending to show that the fires were not accidental.

(b) A is employed to receive money from the debtors of B. It is A's duty to make entries in a book showing the amounts received by him. He makes an entry showing that, on a particular occasion, he received less than he really did receive.

The question is, whether this false entry was accidental or intentional.

The facts that other entries made by A in the same book are false, and that the false entry is in each case in favour of A, are relevant.

(c) A is accused of fraudulently delivering to B a counterfeit rupee.

The question is, whether the delivery of the rupee was accidental.

The facts that, soon before or soon after the delivery to B, A delivered counterfeit rupees to C, D, and E, are relevant as showing that the delivery to B was not accidental.

* In s. 15, the words quoted have been inserted by the Indian Evidence Act (1872) Amendment Act (III, of 1891), s. 2.

Each of these legacies is specific.

(b) A, having Government promissory notes for 10,000 rupees, bequeaths to his executors "Government promissory notes for 10 000 rupees in trust to sell" for the benefit of B :

The legacy is specific

(c) A having property at Benares, and also in other places, bequeaths to B all his property at Benares :

The legacy is specific.

(d) A bequeaths to B—

his house in Calcutta ;

his zamindari of Rampur ;

his taluq of Ramnagar ,

his lease of the indigo-factory of Salkya ;

an annuity of 500 rupees out of the rents of his zamindari of W :

A directs his zamindari of X. to be sold, and the proceeds to be invested for the benefit of B :

Each of these bequests is specific.

(e) A, by his will, charges his zamindari of Y with an annuity of 1,000 rupees to C during his life, and subject to this charge he bequeaths the zamindari to D :

Each of these bequests is specific.

(f) A bequeaths a sum of money—

to buy a house in Calcutta for B ,

to buy an estate in zilla Faridpur for B

to buy a diamond ring for B ,

to buy a horse for B ;

to be invested in shares in the Bank of Bengal for B ,

to be invested in Government securities for B

A bequeaths to B—

"a diamond-ring ;"

"a horse ;"

"10,000 rupees worth of Government securities ,"

"an annuity of 500 rupees ,"

"2,000 rupees to be paid in cash ,"

"so much money as will produce 5,000 rupees four per cent. Government securities ."

These bequests are not specific.

(g) A, having property in England and property in India, bequeaths a legacy to B, and directs that it shall be paid out of the property which he may leave in India. He also bequeaths a legacy to C, and directs that it shall be paid out of the property which he may leave in England .

No one of these legacies is specific.

130. Where a sum certain is bequeathed, the legacy is not

Bequest of sum certain where stocks, &c, in which invested are described specific merely because the stocks, funds, or securities in which it is invested are described in the will.

19. Statements made by persons, whose position or liability
Admissions by persons it is necessary to prove as against any party to the suit, are admissions, if such statements would be relevant as against such persons in relation to such position or liability in a suit brought by or against them, and if they are made whilst the person making them occupies such position, or is subject to such liability.

Illustrations.

A undertakes to collect rents for B.

B sues A for not collecting rent due from C to B.

A denies that rent was due from C to B.

A statement by C that he owed B rent is an admission, and is a relevant fact as against A, if A denies that C did owe rent to B.

20. Statements made by persons to whom a party to the
Admissions by persons ex- suit has expressly referred for informa-
pressly referred to by party tion in reference to a matter in dispute
to suit. are admissions.

Illustration.

The question is, whether a horse sold by A to B is sound.

A says to B, "Go and ask C; C knows all about it;" C's statement is an admission.

21. Admissions are relevant, and may be proved as against
Proof of admissions against the person who makes them, or his re-
persons making them, and by presentative in interest;* but they cannot
or on their behalf. be proved by or on behalf of the person
 who makes them, or by his representative in interest, except in the following cases :—

- (1) An admission may be proved by or on behalf of the person making it, when it is of such a nature that, if the person making it were dead, it would be relevant as between third persons under section 32.
- (2) An admission may be proved by or on behalf of the person making it, when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.

* 4 Suth. W. R., 148

Illustrations.

(a) A, having a lease of a house for a term of years, 15 of which were unexpired at the time of his death, has bequeathed the lease to B for his life, and, after B's death, to C. B is to enjoy the property as A left it, although, if B lives for 15 years, C can take nothing under the bequest.

(b.) A having an annuity during the life of B, bequeaths it to C for his life, and, after C's death, to D. C is to enjoy the annuity as A left it, although, if B dies before D, D can take nothing under the bequest.

135. Where property comprised in a bequest to two or more

Sale and investment of persons in succession is not specifically proceeds of property be- bequeathed, it shall, in the absence of queathed to two or more any direction to the contrary, be sold, persons in succession. and the proceeds of the sale shall be invested in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct, and the fund thus constituted shall be enjoyed by the successive legatees according to the terms of the will.

Illustration.

A, having a lease for a term of years, bequeaths "all his property" to B for life, and after B's death to C. The lease must be sold, and the proceeds invested as stated in the text, and the annual income arising from the fund is to be paid to B for life. At B's death the capital of the fund is to be paid to C.

Where deficiency of assets to pay legacies, specific legacy not to abate with general legacies.

136. If there be a deficiency of assets to pay legacies, a specific legacy is not liable to abate with the general legacies.

PART XX.***OF DEMONSTRATIVE LEGACIES.****137.** Where a testator bequeaths a certain sum of money or

Demonstrative legacy defined. a certain quantity of any other commodity, and refers to a particular fund or stock so as to constitute the same the primary fund or stock out of which payment is to be made, the legacy is said to be demonstrative.

* Part XX. applies to the wills of Hindus, Jains, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay.—See the Hindu Wills Act (XXI. of 1870), s. 2.

23 In civil cases no admission is relevant, if it is made either upon an express condition that evidence of it is not to be given, or under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given.

Explanation.—Nothing in this section shall be taken to exempt any barrister, pleader, attorney, or vakil from giving evidence of any matter of which he may be compelled to give evidence under section 126.

24. A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat, or promise, having reference to the charge against the accused person proceeding from a person in authority,[†] and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable, for supposing that, by making it, he would gain any advantage, or avoid any evil of a temporal nature in reference to the proceedings against him.

Confession to police-officer not to be proved.

25 No confession made to a police-officer[‡] shall be proved as against a person accused of any offence.

26. No confession made by any person whilst he is in the custody of a police-officer unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

Explanation.[§]—In this section “Magistrate” does not include the head of a village discharging magisterial functions in the Presidency of Fort St. George or in Burma or elsewhere, unless such

* For prohibition of such inducements, &c, see the Code of Criminal Procedure (Act V of 1898), s 343.

† 9 Bom H C. R 358.

‡ In s 25, as in force in Upper Burma, the words, “who is not a Magistrate,” shall be deemed to have been inserted after “police-officer” [see the Upper Burma Laws Act (XX of 1886), s 7 (1) (2)] As to statement made to a police-officer investigating a case, see the Code of Criminal Procedure (Act V. of 1898). ss. 161 and 162

§ This *Explanation* has been added to s 26 by the Indian Evidence Act (1872) Amendment Act (III of 1891), s. 3

PART XXI.*

OF ADEMPMENT OF LEGACIES.

139. If anything which has been specifically bequeathed does not belong to the testator at the time of Ademption explained his death, or has been converted into property of a different kind, the legacy is adeemed; that is, it cannot take effect by reason of the subject-matter having been withdrawn from the operation of the will.

Illustrations.

(a.) A bequeaths to B—

"the diamond-ring presented to him by C,"

"his gold-chain,"

"a certain bale of wool;"

"a certain piece of cloth,"

"all his household-goods which shall be in or about his dwelling house in M Street in Calcutta at the time of his death:"

A, in his lifetime,—

sells or gives away the ring,

converts the chain into a cup;

converts the wool into cloth;

makes the cloth into a garment,

takes another house into which he removes all his goods:

Each of these legacies is adeemed

(b.) A bequeaths to B—

"the sum of 1 000 rupees in a certain chest,"

"all the horses in his stable:"

At the death of A, no money is found in the chest, and no horses in the stable. The legacies are adeemed

(c.) A bequeaths to B certain bales of goods. A takes the goods with him on a voyage. The ship and goods are lost at sea, and A is drowned. The legacy is adeemed.

140. A demonstrative legacy is not adeemed by reason that

Non-ademption of demonstrative legacy. the property on which it is charged by the will does not exist at the time of the death of the testator, or has been converted into property of a different kind. but it shall, in such case, be paid out of the general assets of the testator.

* Part XXI. applies to the wills of Hindus, Jainas, Sikhs and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay—See the Hindu Wills Act (XXI. of 1870), s. 2.

Illustrations.

(a.) A and B are jointly tried for the murder of C. It is proved that A said, 'B and I murdered C.' The Court may consider the effect of this confession as against B.

(b.) A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B said, "A and I murdered C."

This statement may not be taken into consideration by the Court against A, as B is not being jointly tried.

31. Admissions are not conclusive proof of the matters admitted, but they may operate as estoppels under the provisions hereinafter contained.

Admissions not conclusive proof, but may estop.

STATEMENTS BY PERSONS WHO CANNOT BE CALLED AS WITNESSES.

32. Statements written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases :—

Cases in which statement of relevant fact by person who is dead or cannot be found, &c., is relevant.

(1) When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

When it relates to cause of death;

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

(2) When the statement was made by such person, in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgment, written or signed by him, of the receipt of money, goods, securities, or property of any kind; or of a document used in commerce, written or signed by him, or of the date of a letter or other document usually dated, written, or signed by him.

144 Where a portion of a fund is specifically bequeathed to

Order of payment where portion of fund specifically bequeathed to one legatee, and legacy charged on same fund to another, and testator having received portion of that fund, remainder insufficient to pay both legacies.

one legatee, and a legacy charged on the same fund is bequeathed to another legatee, if the testator receives a portion of that fund, and the remainder of the fund is insufficient to pay both the specific and the demonstrative legacy, the specific legacy shall be paid first, and the residue (if any) of the fund shall be applied, so far as it will extend, in payment of the demonstrative legacy, and the rest of the demonstrative legacy shall be paid out of the general assets of the testator.

Illustration.

A bequeaths to B 1,000 rupees, part of the debt of 2,000 rupees due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. A afterwards receives 500 rupees part of that debt, and dies leaving only 1,500 rupees due to him from W. Of these 1,500 rupees, 1,000 rupees belong to B, and 500 rupees are to be paid to C. C is also to receive 500 rupees out of the general assets of the testator.

Ademption where stock specifically bequeathed does not exist at testator's death.

145. Where stock, which has been specifically bequeathed, does not exist at the testator's death, the legacy is adeemed.

Illustration.

A bequeaths to B—

"his capital stock of 1,000^l in East India Stock,"

"his promissory notes of the Government of India for 10,000 rupees in their four per cent loan "

A sells the stock and the notes. The legacies are adeemed.

146. Where stock, which has been specifically bequeathed,

Ademption *pro tanto* where stock, specifically bequeathed, exists in part only at testator's death

does only in part exist at the testator's death, the legacy is adeemed so far as regards that part of the stock which has ceased to exist.

Illustration.

A bequeaths to B "his 10,000 rupees in the 5½ per cent. loan of the Government of India." A sells one-half of his 10,000 rupees in the loan in question. One-half of the legacy is adeemed.

A dies of injuries received in a transaction in the course of which she was ravished. The question is, whether she was ravished by B; or

The question is, whether A was killed by B under such circumstances that a suit would lie against B by A's widow.

Statements made by A as to the cause of his or her death, referring respectively to the murder, the rape, and the actionable wrong under consideration, are relevant facts

(b) The question is as to the date of A's birth

An entry in the diary of a deceased surgeon, regularly kept in the course of business, stating that, on a given day, he attended A's mother, and delivered her of a son, is a relevant fact.

(c) The question is, whether A was in Calcutta on a given day:

A statement in the diary of a deceased solicitor regularly kept in the course of business, that, on a given day, the solicitor attended A at a place mentioned in Calcutta, for the purpose of conferring with him upon specified business, is a relevant fact

(d) The question is, whether a ship sailed from Bombay harbour on a given day.

A letter written by a deceased member of a merchant's firm by which she was chartered, to their correspondents in London to whom the cargo was consigned, stating that the ship sailed on a given day from Bombay harbour, is a relevant fact.

(e) The question is, whether rent was paid to A for certain land.

A letter from A's deceased agent to A saying that he had received the rent on A's account, and held it at A's orders, is a relevant fact

(f) The question is, whether A and B were legally married

The statement of a deceased clergyman that he married them under such circumstances that the celebration would be a crime is relevant

(g) The question is, whether A, a person who cannot be found, wrote a letter on a certain day:

The fact that a letter written by him is dated on that day is relevant

(h) The question is, what was the cause of the wreck of a ship.

A protest made by the captain, whose attendance cannot be procured, is a relevant fact.

(i) The question is, whether a given road is a public way:

A statement by A, a deceased headman of the village, that the road was public is a relevant fact

(j) The question is, what was the price of grain on a certain day in a particular market. A statement of the price, made by a deceased baia in the ordinary course of his business, is a relevant fact.

(k) The question is, whether A, who is dead, was the father of B:

A statement by A that B was his son is a relevant fact.

(l) The question is, what was the date of the birth of A:

but, if he mixes it up with the general mass of his property, the legacy is adeemed.

{Illustration.

A bequeaths to B whatever sum may be received from his claim on C. A receives the whole of his claim on C, and sets it apart from the general mass of his property. The legacy is not adeemed.

150. Where a thing specifically bequeathed undergoes a

Change by operation of law of subject of specific bequest between date of will and testator's death. change between the date of the will and the testator's death, and the change takes place by operation of law, or in the course of execution of the provisions of any legal instrument under which the thing bequeathed was held, the legacy is not adeemed by reason of such change.

{Illustrations.

A bequeaths to B "all the money which he has in the 5½ per cent loan of the Government of India." The securities for the 5½ per cent. loan are converted during A's lifetime into five per cent. stock

A bequeaths to B the sum of 2,000*l.* invested in consols in the names of trustees for A. The sum of 2,000*l.* is transferred by the trustees into A's own name :

A bequeaths to B the sum of 10,000 rupees in promissory notes of the Government of India, which he has power, under his marriage settlement, to dispose of by will. Afterwards, in A's lifetime, the fund is converted into consols by virtue of an authority contained in the settlement.

No one of these legacies has been adeemed.

151. Where a thing specifically bequeathed undergoes a

Charge of subject without testator's knowledge. change between the date of the will and the testator's death, and the change takes place without the knowledge or sanction of the testator, the legacy is not adeemed.

Illustration.

A bequeaths to B "all his three per cent consols." The consols are, without A's knowledge, sold by his agent, and the proceeds converted into East India Stock. This legacy is not adeemed.

Stock specifically bequeathed, lent to third party on condition that it be replaced.

152. Where stock, which has been specifically bequeathed, is lent to a third party on condition that it shall be replaced, and it is replaced accordingly, the legacy is not adeemed.

has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

Illustration.

A sues B for Rs. 1,000, and shows entries in his account-books showing B to be indebted to him to this amount. The entries are relevant, but are not sufficient, without other evidence, to prove the debt.

35. An entry in any public or other official book, register, or

Relevancy of entry in public record, stating a fact in issue or relevant fact, and made by a public servant in performance of duty. the discharge of his official duty or by any other person in performance of a duty, specially enjoined by the law of the country in which such book, register, or record is kept, is itself a relevant fact.

36. Statements of facts in issue or relevant facts, made in

Relevancy of statements in published maps or charts generally maps, charts, and plans. offered for public sale, or in maps or plans made under the authority of Government, as to matters usually represented or stated in such maps, charts, or plans, are themselves relevant facts.

37. When the Court has to form an opinion as to existence

Relevancy of statement as to fact of public nature contained in certain Acts or notifications. of any fact of a public nature, any statement of it, made in a recital contained in any Act of Parliament or in any Act of the Governor-General of India in Council, or of the Governors in Council of Madras or Bombay, or of the Lieutenant-Governor in Council of Bengal, or in a notification of the Government appearing in the Gazette of India, or in the gazette of any Local Government, or in any printed paper purporting to be the London Gazette or the Government Gazette of any colony or possession of the Queen, is a relevant fact.

*This section also applies to any Act of the Lieutenant Governor in Council of the North-Western Provinces and Oudh, the Punjab, or Burmah.**

38. When the Court has to form an opinion as to a law of

Relevancy of statements as to any law contained in law-books. any country, any statement of such law contained in a book purporting to be printed or published under the authority

* To s. 37, the italicized paragraph has been added by the Indian Evidence Act (V. of 1899), s. 2.

Illustrations.

(a) A, having contracted in general terms for the purchase of a piece of land at a certain price, bequeaths it to B, and dies before he has paid the purchase money. The purchase money must be made good out of A's assets.

(b) A having contracted for the purchase of a piece of land for a certain sum of money, one-half of which is to be paid down and the other half secured by mortgage of the land, bequeaths it to B, and dies before he has paid or secured any part of the purchase-money. One-half of the purchase-money must be paid out of A's assets

156. Where there is a bequest of any interest in immoveable

Exoneration of legatee's property, in respect of which payment immoveable property for in the nature of land-revenue or in the which land-revenue or rent nature of rent, has to be made periodically payable periodically. cally, the estate of the testator shall (as between such estate and the legatee) make good such payments or a proportion of them up to the day of his death.

Illustration.

A bequeaths to B a house, in respect of which 365 rupees are payable annually by way of rent A pays his rent at the usual time, and dies 25 days after A's estate shall make good 25 rupees in respect of the rent.

157. In the absence of any direction in the will where there

Exoneration of specific legatee's stock in joint-stock company is a specific bequest of stock in a joint-stock company, if any call or other payment is due from the testator at the time of his death in respect of such stock, such call or payment shall, as between the testator's estate and the legatee, be borne by such estate; but, if any call or other payment shall, after the testator's death, become due in respect of such stock, the same shall, as between the testator's estate and the legatee, be borne by the legatee if he accept the bequest.

Illustrations.

(a) A bequeathed to B his shares in a certain railway. At A's death there was due from him the sum of 5*l.* in respect of each share, being the amount of a call which had been duly made, and the sum of 5*s.* in respect of each share, being the amount of interest which had accrued due in respect of the call. These payments must be borne by A's estate.

(b) A has agreed to take 50 shares in an intended joint-stock company, and has contracted to pay up 5*l.* in respect of each share, which sum must be paid before his title to the shares can be completed. A bequeaths these shares to B. The estate of A must make good the payments which were necessary to complete A's title.

(c) A bequeaths to B his shares in a certain railway. B accepts the legacy. After A's death, a call is made in respect of the shares B must pay the call.

that any legal character which it takes away from any such person ceased at the time from which such judgment, "order, or decree" * declared that it had ceased or should cease;

and that anything to which it declares any person to be so entitled, was the property of that person at the time from which such judgment, "order, or decree" * declares that it had been or should be his property.

42. Judgments, orders, or decrees, other than those mentioned in section 41, are relevant if they relate to matters of a public nature relevant to the enquiry; but such judgments, orders, or decrees are not conclusive proof of that which they state.†

Relevancy and effect of judgments, orders, or decrees, other than those mentioned in section 41.

Illustrations.

A sues B for trespass on his land. B alleges the existence of a public right of way over the land, which A denies.

The existence of a decree in favour of the defendant, in a suit by A against C for a trespass on the same land, in which C alleged the existence of the same right of way, is relevant, but it is not conclusive proof that the right of way exists.

43. Judgments, orders, or decrees other than those mentioned in sections 40, 41, and 42, are irrelevant, unless the existence of such judgment, order, or decree, is a fact in issue, or is relevant under some other provision of this Act.

Judgment, &c., other than those mentioned in sections 40 to 42, when relevant.

Illustrations

(a) A and B separately sue C for a libel which reflects upon each of them. C, in each case, says that the matter alleged to be libellous is true, and the circumstances are such that it is probably true in each case, or in neither.

A obtains a decree against C for damages on the ground that C failed to make out his justification. The fact is irrelevant as between B and C.

(b) A prosecutes B for adultery with C, A's wife.

B denies that C is A's wife, but the Court convicts B of adultery.

Afterwards, C is prosecuted for bigamy in marrying B during A's lifetime. C says that she never was A's wife.

* In s. 41, the words quoted, wherever they occur, have been inserted by the Indian Evidence Act (1872) Amendment Act (XVIII. of 1872), s. 3
 † 22 South. W. R., Cr. R. 365.

those securities B is entitled to A's five per cent. promissory notes of the Government of India.

(b) A bequeaths the interest of his $5\frac{1}{2}$ per cent. promissory notes of the Government of India to B for his life, and after his death to C. B is entitled to the interest of the notes during his life, and C is entitled to the notes upon B's death

(c) A bequeaths to B the rents of his lands at X. B is entitled to the lands

PART XXV.*

OF BEQUESTS OF ANNUITIES.

160 Where an annuity is created by will, the legatee is entitled

to receive it for his life only unless a contrary intention appears by the will. And this rule shall not be varied by the circumstance that the annuity is directed to be paid out of the property generally, or that a sum of money is bequeathed to be invested in the purchase of it.

Illustrations.

(a) A bequeaths to B 500 rupees a year. B is entitled, during his life, to receive the annual sum of 500 rupees.

(b) A bequeaths to B the sum of 500 rupees monthly. B is entitled during his life to receive the sum of 500 rupees every month.

(c) A bequeaths an annuity of 500 rupees to B for life, and, on B's death, to C. B is entitled to an annuity of 500 rupees during his life. C, if he survives B, is entitled to an annuity of 500 rupees from B's death until his own death.

161. Where the will directs that an annuity shall be provided

Period of vesting where will directs that annuity be provided out of proceeds of property, or out of property generally, or where money bequeathed to be invested in purchase of annuity

for any person out of the proceeds of property, or out of property generally, or where money is bequeathed to be invested in the purchase of any annuity for any person on the testator's death, the legacy vests in interest in the legatee, and he is entitled, at his option, to have an annuity purchased for him, or to receive the money appropriated for that purpose by the will.

* Part XXV applies to the wills of Hindus, Jains, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay.—See the Hindu Wills Act (XXI. of 1870), s. 2.

The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.

(c.) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A.

The opinions of experts on the question whether the two documents were written by the same person or by different persons are relevant.

46. Facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant.

Illustrations.

(a) The question is, whether A was poisoned by a certain poison.

The fact that other persons, who were poisoned by that poison, exhibited certain symptoms which experts affirm or deny to be the symptoms of that poison, is relevant.

(b) The question is, whether an obstruction to a harbour is caused by a certain sea-wall.

The fact that other harbours similarly situated in other respects, but where there were no such sea-walls, began to be obstructed at about the same time, is relevant.

47. When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed, that it was or was not written or signed by that person, is a relevant fact.

Explanation.—A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority, and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

Illustrations.

The question is, whether a given letter is in the handwriting of A, a merchant in London.

Illustration.

A, by articles entered into in contemplation of his marriage with B, covenanted that he would pay to each of the daughters of the in ended marriage a portion of 20,000 rupees on her marriage. This covenant having been broken, A bequeaths 20,000 rupees to each of the married daughters of himself and B. The legatees are entitled to the benefit of this bequest in addition to their portions

166. No bequest shall be wholly or partially adeemed by a

No ademption by subsequent provision for legatee subsequent provision made by settlement or otherwise for the legatee.

Illustrations.

(a) A bequeaths 20,000 rupees to his son B. He afterwards gives to B the sum of 20,000 rupees. The legacy is not thereby adeemed.

(b.) A bequeaths 40,000 rupees to B, his orphan niece whom he had brought up from her infancy. Afterwards, on the occasion of B's marriage, A settles upon her the sum of 30,000 rupees. The legacy is not thereby diminished.

PART XXVII.*

OF ELECTION.

167. Where a man, by his will, professes to dispose of some-

Circumstances in which election takes place. thing which he has no right to dispose of, the person to whom the thing belongs shall elect either to confirm such disposition, or to dissent from it; and, in the latter case, he shall give up any benefits which may have been provided for him by the will.

168. The interest so relinquished shall devolve as if it had

Devolution of interest relinquished by owner. not been disposed of by the will in favour of the legatee, subject, nevertheless, to the charge of making good to the disappointed legatee the amount or value of the gift attempted to be given to him by the will.

169. This rule will apply whether the testator does or does

Testator's belief as to his ownership immaterial. not believe that which he professes to dispose of by his will to be his own.

* Part XXVII. applies to the wills of Hindus, Jainas, Sikhs, and Buddhists in the Lower Province, of Bengal, and in the towns of Madras and Bombay.—See the Hindu Wills Act (XXI. of 1870), s. 2.

Illustrations.

(a) The question is, whether A and B were married. The fact that they were usually received and treated by their friends as husband and wife is relevant.

(b) The question is, whether A was the legitimate son of B. The fact that A was always treated as such by members of the family is relevant.

51. Whenever the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant.

Illustration.

An expert may give an account of experiments performed by him for the purpose of forming his opinion.

Character when relevant.

52. In civil cases the fact that the character of any person concerned is such as to render probable or improbable any conduct imputed to him, is irrelevant, except in so far as such character appears from facts otherwise relevant.

In civil cases character to prove conduct imputed, irrelevant.

53. In criminal proceedings the fact that the person accused is of a good character is relevant.

54.* In criminal proceedings the fact that the accused person has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.

Explanation 1—This section does not apply to cases in which the bad character of any person is itself a fact in issue.

Explanation 2.—A previous conviction is relevant as evidence of bad character.

55. In civil cases, the fact that the character of any person is such as to affect the amount of damages which he ought to receive is relevant.

Explanation.—In sections 52, 53, 54, and 55, the word "character" includes both reputation and disposition; but, *except as*

* The present s. 54 has been substituted for the original by the Indian Evidence Act (1879) Amendment Act (III. of 1891), s. 6.

Person taking in individual capacity under will may, in other character, elect to take in opposition

172. A person who, in his individual capacity, takes a benefit under the will, may, in another character, elect to take in opposition to the will.

Illustration

The estate of Sultanpur is settled upon A for life, and after his death upon B. A leaves the estate of Sultanpur to D, and 2,000 rupees to B and 1,000 rupees to C, who is B's only child. B dies intestate shortly after the testator, without having made an election. C takes out administration to B, and as administrator elects to keep the estate of Sultanpur in opposition to the will, and to relinquish the legacy of 2,000 rupees. C may do this, and yet claim his legacy of 1,000 rupees under the will.

Exception to the six last rules.—Where a particular gift is expressed in the will to be in lieu of something belonging to the legatee, which is also in terms disposed of by the will, if the legatee claims that thing, he must relinquish the particular gift, but he is not bound to relinquish any other benefit given to him by the will.

Illustration

Under A's marriage-settlement his wife is entitled, if she survives him, to the enjoyment of the estate of Sultanpur during her life. A, by his will, bequeaths to his wife an annuity of 200*l* during her life, in lieu of her interest in the estate of Sultanpur, which estate he bequeaths to his son. He also gives his wife a legacy of 1,000*l*. The widow elects to take what she is entitled to under the settlement. She is bound to relinquish the annuity, but not the legacy of 1,000*l*.

173. Acceptance of a benefit given by the will constitutes an

When acceptance of benefit given by will constitutes election by the legatee to take under the will if he has knowledge of his right to election to take under will elect, and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he waives inquiry into the circumstances.

Illustrations.

(a) A is owner of an estate called Sultanpur Khurd, and has a life-interest in another estate called Sultanpur Buzurg, to which, upon his death, his son B will be absolutely entitled. The will of A gives the estate of Sultanpur Khurd to B, and the estate of Sultanpur Buzurg to C. B in ignorance of his own right to the estate of Sultanpur Buzurg, allows C to take possession of it, and enters into possession of the estate of Sultanpur Khurd. B has not confirmed the bequest of Sultanpur Buzurg to C.

(b) B, the eldest son of A, is the possessor of an estate called Sultanpur. A bequeaths Sultanpur to C, and to B the residue of A's property. B

British India, established by the authority of the Governor-General * or any local Government in Council; the seals of Courts of Admiralty and Maritime jurisdiction and of Notaries Public; and all seals which any person is authorized to use by any Act of Parliament or other Act or Regulation having the force of law in British India;

(7) the accession to office, names, titles, functions, and signatures of the persons filling, for the time being any public office in any part of British India if the fact of their appointment to such office is notified in the Gazette of India, or in the official gazette of any local Government;

(8) the existence, title, and national flag of every State or Sovereign recognized by the British Crown;

(9) the divisions of time, the Geographical divisions of the world, and public festivals, fasts, and holidays notified in the official gazette;

(10) the territories under the dominion of the British Crown;

(11) the commencement, continuance, and termination of hostilities between the British Crown and any other State or body of persons:

(12) the names of the members and officers of the Court, and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates, attorneys, proctors, vakils, pleaders, and other persons authorized by law to appear or act before it;

(13) the rule of the Road "on land or at sea."†

In all these cases,‡ and also on all matters of public history, literature, science, or art, the Court may resort for its aid to appropriate books or documents of reference.

If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so, unless and until such person produces any such book or document as it may consider necessary to enable it to do so.

* For lists of such Courts, see the notifications printed on pp 372 to 374 of the Western India Volume of the Lists of British Enactments in force in native States.

† The words quoted in s. 57, para (13), have been inserted by the Indian Evidence Act (1872) Amendment Act (XVIII of 1872) s 5.

‡ For an additional case, see the Code of Civil Procedure (Act XIV. of 1882), s. 431.

PART XXVIII.*

OF GIFTS IN CONTEMPLATION OF DEATH.

Property transferable by gift made in contemplation of death. **178.** A man may dispose, by gift made in contemplation of death, of any moveable property which he could dispose of by will.

A gift is said to be made in contemplation of death where a man, who is ill, and expects to die shortly of his illness, delivers to another the possession of any moveable property to keep as a gift in case the donor shall die of that illness.

Such gift resumable. Such a gift may be resumed by the giver.

It does not take effect if he recovers from the illness during which it was made; nor if he survives the person to whom it was made.

Illustrations.

(a) A, being ill, and in expectation of death, delivers to B to be retained by him in case of A's death—

a watch,
a bond granted by C to A,
a bank-note;
a promissory note of the Government of India endorsed in blank,
a bill of exchange endorsed in blank,
certain mortgage-deeds:

A dies of the illness during which he delivered these articles.

B is entitled to—

the watch,
the debt secured by C's bond,
the bank-note,
the promissory note of the Government of India,
the bill of exchange,
the money secured by the mortgage-deeds

(b.) A, being ill, and in expectation of death, delivers to B the key of a trunk, or the key of a warehouse in which goods of bulk belonging to A are deposited, with the intention of giving him the control over the contents of the trunk, or over the deposited goods, and desires him to keep them in case

* This Part does not apply to Hindus.—See the Hindu Wills Act (XXI. of 1870).

CHAPTER V.

OF DOCUMENTARY EVIDENCE.

Proof of contents of documents.

61. The contents of documents may be proved either by primary or by secondary evidence.

Primary evidence.

62 Primary evidence means the document itself produced for the inspection of the Court.

Explanation 1.—Where a document is executed in several parts, each part is primary evidence of the document.

Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it

Explanation 2.—Where a number of documents are all made by one uniform process, as in the case of printing, lithography, or photography, each is primary evidence of the contents of the rest ; but, where they are all copies of a common original, they are not primary evidence of the contents of the original.

Illustration.

A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original.

Secondary evidence.

63. Secondary evidence means and includes—

- (1) certified copies given under the provisions hereinafter contained ; *
- (2) copies made from the original by mechanical processes which, in themselves, insure the accuracy of the copy, and copies compared with such copies ;
- (3) copies made from or compared with the original ;
- (4) counterparts of document as against the parties who did not execute them ;
- (5) oral accounts of the contents of a document given by some person who has himself seen it.

* See s 76, *infra*.

Illustrations.

(a) A wills that C be his executor if B will not. B is appointed executor by implication

(b.) A gives a legacy to B and several legacies to other persons, among the rest to his daughter-in-law,* C, and adds, "but, should the within-named C be not living, I do constitute and appoint B my whole and sole executrix" C is appointed executrix by implication.

(c.) A appoints several persons executors of his will and codicils, and his nephew residuary legatee, and in another codicil are these words: "I appoint my nephew my residuary legatee to discharge all lawful demands against my will and codicils, signed of different dates" The nephew is appointed an executor by implication

183. Probate cannot be granted to any person who is a minor
Persons to whom probate cannot be granted. or is of unsound mind, nor to a married woman without the previous consent of her husband.

Grant of probate to several executors simultaneously or at different times

184. When several executors are appointed, probate may be granted to them all simultaneously, or at different times

Illustration

A is an executor of B's will by express appointment and C an executor of it by implication Probate may be granted to A and C at the same time, or to A first and then to C, or to C first and then to A.

185. If a codicil be discovered after the grant of probate, a separate probate of that codicil may be granted to the executor if it in no way repeals the appointment of executors made by the will.
Separate probate of codicil discovered after grant of probate.

If different executors are appointed by the codicil, the probate of the will must be revoked, and a new probate granted of the will and the codicil together
Procedure when different executors appointed by codicil

186. When probate has been granted to several executors, and one of them dies, the entire representation of the testator accrues to the surviving executor or executors.
Accrual of representation to surviving executor

* See s. 6, Act XXI of 1870 (the Hindu Wills Act)

(e) when the original is a public document within the meaning of section 74;

(f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in British India to be given in evidence;

(g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court and the fact to be proved is the general result of the whole collection.

In cases (a), (e), (d), any secondary evidence of the contents of the document is admissible.

In case (b), the written admission is admissible.

In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

66 Secondary evidence of the contents of the documents

Rules as to notice to produce referred to in section 65, clause (a), shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is "or to his attorney or pleader,"* such notice to produce it as is prescribed by law; and, if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case;

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it:—

- (1) when the document to be proved is itself a notice,
- (2) when, from the nature of the case, the adverse party must know that he will be required to produce it;
- (3) when it appears or is proved that the adverse party has obtained possession of the original by fraud or force;

* In s. 66, the words quoted have been inserted by Act XVIII. of 1872, s. 6.

193. When a person appointed an executor has not renounced the executorship, letters of administration shall not be granted to any other person until a citation has been issued calling upon the executor to accept or renounce his executorship ;

Grant of administration where executor has not renounced.

calling upon the executor to accept or renounce his executorship ;

except that, when one or more of several executors have proved a will, the Court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved.

Exception.

letters of administration without citing those who have not proved.

194. The renunciation may be made orally in the presence of the Judge, or by a writing signed by the person renouncing, and, when made, shall preclude him from ever thereafter applying for probate of the will appointing him executor.

Form and effect of renunciation of executorship.

of the Judge, or by a writing signed by the person renouncing, and, when made, shall preclude him from ever thereafter applying for probate of the will appointing him executor.

195. If the executor renounce, or fail to accept, the executorship within the time limited for the acceptance or refusal thereof, the will may be proved, and letters of administration with a copy of the will annexed may be granted to the person who would be entitled to administration in case of intestacy.*

Procedure where executor renounces or fails to accept within time limited.

ship within the time limited for the acceptance or refusal thereof, the will may be proved, and letters of administration with a copy of the will annexed may be granted to the person who would be entitled to administration in case of intestacy.*

Grant of administration to universal or residuary legatee.

196. When the deceased has made a will, but has not appointed an executor; or

when he has appointed an executor who is legally incapable, or refuses to act, or has died before the testator, or before he has proved the will; or

when the executor dies after having proved the will, but before he has administered all the estate of the deceased,†

an universal or a residuary legatee may be admitted to prove the will, and letters of administration with the will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered.

197. When a residuary legatee who has a beneficial interest survives the testator, but dies before the estate has been fully administered, his representative has the same right to administration with the will annexed as such residuary legatee.

Right to administration of representative of deceased residuary legatee

survives the testator, but dies before the estate has been fully administered, his representative has the same right to administration with the will annexed as such residuary legatee.

* See s. 6, Act XXI. of 1870.

† 12 B. L. R. 423, 427.

73. In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person, may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

*This section applies also, with any necessary modifications, to finger impressions.**

Public Documents.

Public documents.

72. The following documents are public documents:—

1. Documents forming the Acts, or records of the Acts—
 - (i) of the sovereign authority,
 - (ii) of official bodies and tribunals, and
 - (iii) of public officers, legislative, judicial, and executive, whether of British India, or of any other part of Her Majesty's dominions or of a foreign country.
2. Public records kept in British India of private documents.

Private documents.

75. All other documents are private.

76. Every public officer having the custody of a public document which any person has a right to inspect shall give that person, on demand, a copy of it, on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal; and such copies so certified shall be called certified copies.

* In s 73, the last paragraph has been added by the Indian Evidence Act (V. of 1899), s. 3 (2).

who would be beneficially entitled to the estate according to the rules for the distribution of an intestate's estate:

Provided that, when the mother of the deceased shall be one of the class of persons so entitled, she shall be solely entitled to administration.

204. Those who stand in equal degree of kindred to the deceased are equally entitled to administration.*

205. The husband, surviving his wife, has the same right of administration of her estate as the widow has in respect of the estate of her husband.

206. When there is no person connected with the deceased by marriage or consanguinity who is entitled to letters of administration, and willing to act, they may be granted to a creditor.

207. Where the deceased has left property in British India, letters of administration must be granted according to the foregoing rules, although he may have been a domiciled inhabitant of a country in which the law relating to testate and intestate succession differs from the law of British India.

PART XXX.†

OF LIMITED GRANTS.

(a.)—*Grants limited in Duration.*

208. When the will has been lost or mislaid since the testator's death, or has been destroyed by wrong or accident, and not by any act of the testator, and a copy or the draft of the will has been preserved, probate may be granted of such copy or draft, limited until the original or a properly authenticated copy of it be produced.

* Ben. Short Notes of Cases, III

† Compare Act V. of 1881, Ch. III., with sub-parts (a) to (f).

by the original, or by a copy certified by the legal keeper thereof, with a certificate under the seal of a Notary Public, or of a British Consul or Diplomatic Agent, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country.

Presumptions as to Documents.

79. The Court shall presume every document purporting to be a certificate, certified copy or other document which is by law declared to be admissible as evidence of any particular fact, and which purports to be duly certified by any officer in British India, or by any officer in any Native State in alliance with Her Majesty, who is duly authorized thereto by the Governor-General in Council, to be genuine:

Provided that such document is substantially in the form, and purports to be executed in the manner, directed by law in that behalf.

The Court shall also presume that any officer by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such paper.

80. Whenever any document is produced before any Court purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence, or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume—

that the document is genuine; that any statements as to the circumstances under which it was taken purporting to be made by the person signing it, are true; and that such evidence, statement, or confession, was duly taken.

81. The Court shall presume the genuineness of every document purporting to be the London Gazette, or the Gazette of India, or the Government Gazette of any Local Government, or of any colony, depen-

Presumption as to gazettes, newspapers, private Acts of Parliament, and other documents.

215. When a minor is sole executor or sole residuary legatee, Administration during letters of administration, with the will minority of sole executor or annexed, may be granted to the legal residuary legatee. guardian of such minor, or to such other person as the Court shall think fit until the minor shall have completed the age of eighteen years, at which period, and not before, probate of the will shall be granted to him.

216. When there are two or more minor executors, and no executor who has attained majority, or Administration during minority of several executors or residuary legatees two or more residuary legatees, and no residuary legatee who has attained majority, the grant shall be limited until one of them shall have completed the age of eighteen years

217 If a sole executor or a sole universal or residuary legatee, Administration for use or a person who would be solely entitled and benefit of lunatic *jus* to the estate or the intestate according *habens*. to the rule* for the distribution of intestates' estates, be a lunatic, letters of administration, with or without the will annexed, as the case may be, shall be granted to the person to whom the care of his estate has been committed by competent authority, or, if there be no such person, to such other person as the Court may think fit to appoint, for the use and benefit of the lunatic until he shall become of sound mind.

218. Pending any suit touching the validity of the will of a deceased person, or for obtaining or revoking any probate or any grant of letters of administration, the Court may appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator, other than the right of distributing such estate, and every such administrator shall be subject to the immediate control of the Court, and shall act under its direction.

(c)—*For Special Purposes.*

219 If an executor be appointed for any limited purpose— Probate limited to purpose specified in will specified in the will, the probate shall be limited to that purpose, and, if he should appoint an attorney to take administration on his behalf, the letters of administration, with the will annexed, shall accordingly be granted.

* *Sic*, read *rules*.

86. The Court may presume that any document purporting

Presumption as to certified
copies of foreign judicial re-
cords.

to be a certified copy of any judicial record of any country not forming part of Her Majesty's dominions is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of Her Majesty, or of the Government of India, "in or for" such country to be the manner commonly in use in that country for the certification of copies of judicial records.

An officer who, with respect to any territory or place not forming part of Her Majesty's dominions, is a Political Agent therefor, as defined in section 3, clause (40), of the General Clauses Act, 1897, shall, for the purposes of this section, be deemed to be a representative of the Government of India in and for the country comprising that territory or place.†

87. The Court may presume that any book to which it may

Presumption as to books,
maps, and charts.

refer for information on matters of public or general interest, and that any published map or chart, the statements of which are relevant facts, and which is produced for its inspection, was written and published by the person, and at the time and place, by whom or at which it purports to have been written or published

88. The Court may presume that a message forwarded from

Presumption as to tele-
graphic messages.

a telegraph office to the person to whom such message purports to be addressed corresponds with a message delivered for transmission at the office from which the message purports to be sent; but the Court shall not make any presumption as to the person by whom such message was delivered for transmission.

89. The Court shall presume that every document called

Presumption as to due ex-
ecution, &c., of documents
not produced.

for, and not produced after notice to produce, was attested, stamped, and executed in the manner required by law.

* In s. 86, the words quoted have been substituted for the words "residence in," by the Indian Evidence Act (1872) Amendment Act (III. of 1891), s. 8.

† In s. 86, as amended by s. 8 of the Indian Evidence Act (1872), Amendment Act (III. of 1891), the italicized paragraph has been substituted for the amended paragraph by the Indian Evidence Act (V. of 1899), s. 4.

deceased, and giving discharges for debts due to his estate, subject to the directions of the Court.

225. When a person has died intestate, or leaving a will of

Appointment, as administrator, of person other than one who, under ordinary circumstances, would be entitled to administration which there is no executor willing and competent to act, or where the executor shall, at the time of the death of such person, be resident out of the province, and it shall appear to the Court to be necessary or convenient to appoint some person to administer the estate or any part thereof, other than the person who, under ordinary circumstances, would be entitled to a grant of administration, it shall be lawful for the Judge, in his discretion, having regard to consanguinity, amount of interest, the safety of the estate, and probability that it will be properly administered, to appoint such person as he shall think fit to be administrator,

and in every such case letters of administration may be limited or not as the Judge shall think fit.

(d.)—Grants with Exception.

226. Whenever the nature of the case requires that an excep-

Probate or administration with will annexed, subject to exception tion be made, probate of a will or letters of administration with the will annexed shall be granted subject to such exception.

227. Whenever the nature of the case requires that an excep-

Administration with exception. tion be made, letters of administration shall be granted subject to such exception.

(e.)—Grants of the Rest.

228. Whenever a grant, with exception, of probate or letters

Probate or administration of administration, with or without the will annexed, has been made, the person entitled to probate or administration of the remainder of the deceased's estate may take a grant of probate or letters of administration, as the case may be, of the rest of the deceased's estate.

(f.)—Grants of Effects unadministered.

229. If the executor to whom probate has been granted have

Grant of effects unadministered. died, leaving a part of the testator's estate unadministered, a new represen-

contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Exception 1.—When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

Exception 2.—Wills “admitted to probate in British India”* may be proved by the probate.

Explanation 1.—This section applies equally to cases in which the contracts, grants, or dispositions of property referred to, are contained in one document, and to cases in which they are contained in more documents than one.

Explanation 2.—Where there are more originals than one, one original only need be proved.

Explanation 3.—The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

Illustrations.

(a) If a contract be contained in several letters, all the letters in which it is contained must be proved

(b) If a contract is contained in a bill of exchange, the bill of exchange must be proved.

(c) If a bill of exchange is drawn in a set of three, one only need be proved.

(d) A contracts in writing with B, for the delivery of indigo upon certain terms. The contract mentions the fact that B had paid A the price of other indigo contracted for verbally on another occasion.

Oral evidence is offered that no payment was made for the other indigo. The evidence is admissible.

(e) A gives B a receipt for money paid by B.

Oral evidence is offered of the payment.

The evidence is admissible.

92. When the terms of any such contract, grant, or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no

* These words in s. 91, *Exception 2*, have been substituted for the words “under the Indian Succession Act” by the Indian Evidence Act Amendment Act (XVIII. of 1871), s. 7.

and, that the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case ;

3rd, that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently ;

4th, that the grant has become useless and inoperative through circumstances ;

**5th*, that the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Part XXXIV. of this Act, or has exhibited under that Part an inventory or account which is untrue in a material respect.

Illustrations.

(a.) The Court by which the grant was made had no jurisdiction.

(b.) The grant was made without citing parties who ought to have been cited

(c.) The will of which probate was obtained was forged or revoked.

(d.) A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.

(e) A has taken administration to the estate of B as if he had died intestate, but a will has since been discovered.

(f.) Since probate was granted, a later will has been discovered.

(g) Since probate was granted, a codicil has been discovered, which revokes or adds to the appointment of executors under the will

(h) The person to whom probate was, or letters of administration were, granted has subsequently become of unsound mind.

PART XXXI.†

OF THE PRACTICE IN GRANTING AND REVOKING PROBATES AND LETTERS OF ADMINISTRATION.

235. The District Judge shall have jurisdiction in granting and revoking ‡ probates and letters of administration in all cases within his district.

* Cl. 5 has been added by Act VI. of 1889, s 2.

† Compare the Probate and Administration Act (V. of 1861), Ch. V.

‡ See 2 N.-W. P. 268.

(b) A agrees absolutely in writing to pay B Rs 1,000 on the first March 1873. The fact that, at the same time, an oral agreement was made that the money should not be paid till the thirty-first March cannot be proved

(c) An estate, called "the Rampur tea estate" is sold by a deed which contains a map of the property sold. The fact that land not included in the map had always been regarded as part of the estate, and was meant to pass by the deed, cannot be proved

(d) A enters into a written contract with B to work certain mines, the property of B, upon certain terms. A was induced to do so by a misrepresentation of B's as to their value. This fact may be proved.

(e) A institutes a suit against B for the specific performance of a contract and also prays that the contract may be reformed as to one of its provisions, as that provision was inserted in it by mistake. A may prove that such a mistake was made as would by law entitle him to have the contract reformed.

(f) A orders goods of B by a letter in which nothing is said as to the time of payment, and accepts the goods on delivery. B sues A for the price. A may show that the goods were supplied on credit for a term still unexpired.

(g) A sells B a horse, and verbally warrants him sound. A gives B a paper in these words: "Bought of A a horse for Rs 500." B may prove the verbal warranty.

(h) A hires lodgings of B, and gives B a card on which is written—'Rooms, Rs 200 a month.' A may prove a verbal agreement that these terms were to include partial board.

A hires lodgings of B for a year, and a regularly stamped agreement, drawn up by an attorney, is made between them. It is silent on the subject of board. A may not prove that board was included in the terms verbally.

(i) A applies to B for a debt due to A by sending a receipt for the money. B keeps the receipt, and does not send the money. In a suit for the amount, A may prove this.

(j) A and B make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B, who sues A upon it. A may show the circumstances under which it was delivered.

98. When the language used in a document is on its face,

Exclusion of evidence to explain or amend ambiguous document.	ambiguous or defective, evidence may not be given of facts which would show its meaning, or supply its defects.
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Illustrations.

(a) A agrees, in writing, to sell a horse to B for "Rs. 1,000 or Rs. 1,500"

Evidence cannot be given to show which price was to be given.

(b) A deed contains blanks. Evidence cannot be given of facts which would show how they were meant to be filled.

238. The proceedings of the Court of the District Judge in relation to the granting of probate and letters of administration shall, except as hereinafter otherwise provided, be regulated, so far as the circumstances of the case will admit, by the Code of Civil Procedure.*

239. Until probate be granted of the will of a deceased person or an administrator of his estate be constituted, the District Judge, within whose jurisdiction any part of the property of the deceased person is situate, is authorized and required to interfere for the protection of such property at the instance of any person claiming to be interested therein, and in all other cases where the Judge considers that the property incurs any risk of loss or damage; and for that purpose, if he shall see fit, to appoint an officer to take and keep possession of the property.†

240. Probate of the will or letters of administration to the estate of a deceased person may be granted by the District Judge under the seal of his Court if it shall appear by a petition, verified as hereinafter, mentioned of the person applying for the same, that the testator or intestate, as the case may be, at the time of his decease, had a fixed place of abode, or any property, moveable or immovable, within the jurisdiction of the Judge.

241. When the application is made to the Judge of a District in which the deceased had no fixed abode at the time of his death, it shall be in the discretion of the Judge to refuse the application if, in his judgment, it could be disposed of more justly or conveniently in another district, or, where the application is for letters of administration, to grant them absolutely or limited to the property within his own jurisdiction.

* This reference to Act VIII. of 1859 should now be read as applying to Act V of 1908—See s 158 of the latter Act

† As to the duty of the District Judge to take charge of property in certain cases, and report to the Administrator-General, and his power to pay certain expenses out of the property, see Act II, 1874

S 239 does not apply to any part of the property of a Native Christian.—See Act VII. of 1901.

Illustration.

A agrees to sell to B "my land at X in the occupation of Y." A has land at X, but not in the occupation of Y.; and he has land in the occupation of Y., but it is not at X. Evidence may be given of facts showing which he meant to sell.

98. Evidence may be given to show the meaning of illegible Evidence as to meaning of or not commonly intelligible characters illegible character, &c. of foreign, obsolete, technical, local, and provincial expressions of abbreviations, and of words used in a peculiar sense.

Illustration.

A, a sculptor, agrees to sell to B 'all my mods' A has both models and modelling tools. Evidence may be given to show which he meant to sell.

99. Persons, who are not parties to a document or their Who may give evidence of agreement varying terms of document. representatives in interest, may give evidence of any facts tending to show a contemporaneous agreement varying the terms of the document.

Illustration

A and B make a contract in writing that B shall sell A certain cotton, to be paid for on delivery. At the same time they make an oral agreement that three months' credit shall be given to A. This could not be shown as between A and B, but it might be shown by C, if it affected his interests.

100. Nothing in this chapter contained shall be taken to Saving of provisions of affect any of the provisions of the Indian Succession Act relating to wills. Indian Succession Act (X. of 1865) as to the construction of wills.

PART III.—PRODUCTION AND EFFECT OF EVIDENCE.

CHAPTER VII.—OF THE BURDEN OF PROOF.

101. Whoever desires any Court to give judgment as to any legal right or liability dependent on the Burden of proof. existence of facts which he asserts must prove that those facts exist.

242A.* (1) Where probate or letters of administration has or have been granted by a High Court or District Judge with the effect referred to in the proviso to section 242, the High Court or District Judge shall send a certificate thereof to the following Courts, namely:—

(a) when the grant has been made by a High Court, to each of the other High Courts,

(b) when the grant has been made by a District Judge, to the High Court to which such District Judge is subordinate, and to each of the other High Courts.

(2) Every certificate referred to in sub-section (1) shall be to the following effect, namely:—

'I, A. B., Registrar [*or as the case may be*] of the High Court of Judicature at _____, hereby certify that on the _____ day of _____, the High Court of Judicature at _____ [*or as the case may be*], granted probate of the will [*or letters of administration of the estate*] of C. D., late of _____, deceased, to E. F. of _____ and G. H. of _____, and that such probate [*or letters*] has [*or have*] effect over all the property of the deceased throughout the whole of British India;'

and such certificate shall be filed by the High Court receiving the same.

(3) Where any portion of the assets has been stated by the petitioner, as hereinafter provided in sections 244 and 246, to be situate within the jurisdiction of a District Judge in another Province, the Court required to send the certificate referred to in sub-section (1) shall send a copy thereof to such District Judge, and such copy shall be filed by the District Judge receiving the same.

243. The application for probate or letters of administration, if made and verified in the manner hereinafter mentioned, shall be conclusive for the purpose of authorizing the grant of probate or administration;

and no such grant shall be impeached by reason that the testator or intestate had no fixed place of abode, or no property

* S 242A has been inserted by Act VIII. of 1903.

Illustrations.

(a) A wishes to prove a dying declaration by B. A must prove B's death.

(b) A wishes to prove, by secondary evidence, the contents of a lost document:

A must prove that the document has been lost.

105. When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the Indian Penal Code, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence is upon him, and the Court shall presume the absence of such circumstances.

Illustrations

(a) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act.

The burden of proof is on A.

(b) A, accused of murder, alleges that, by grave and sudden provocation, he was deprived of the power of self-control.

The burden of proof is on A.

(c) Section 325 of the Indian Penal Code provides that, whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be subject to certain punishments.

A is charged with voluntarily causing grievous hurt under section 325:

The burden of proving the circumstances bringing the case under section 335 lies on A.

106. When any fact is specially within the knowledge of any person, the burden of proving that fact is upon him.

Illustrations.

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.

107. When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

"I (A. B.) do declare that I read and perfectly understand the language and character of the original, and that the above is a true and accurate translation thereof."

246. Applications for letters of administration shall be made by petition distinctly written as aforesaid, and stating*—

the time and place of the deceased's death,
the family or other relatives of the deceased, and their respective residences,

the right in which the petitioner claims,

that the deceased left some property within the jurisdiction of the District Judge "or District Delegate"† to whom the application is made, and

the amount of assets which are likely to come to the petitioner's hands;

and, when the application is to a District Delegate, the petition shall further state that the deceased, at the time of his death, resided within the jurisdiction of such Delegate.

§ Where the application is to the District Judge, and any portion of the assets likely to come to the petitioner's hands is situate in another Province, the petition shall further state the amount of such assets in each Province, and the District Judges within whose jurisdiction such assets are situate.

246A.|| (1) Every person applying to any of the Courts mentioned in the proviso to section 242 for probate of a will or letters of administration of an estate intended to have effect throughout British India, shall state in his petition in addition to the matters respectively required by section 244 and section 246 of this Act, that, to the best of his belief, no application has been made to any other Court for a probate of the same will or for letters of administration of the same estate, intended to have such effect as last aforesaid,

* As to the particulars to be stated where the Administrator-General applies for letters of administration, see Act II. of 1874, s. 16.

† The words quoted have been inserted by Act VI. of 1881, s. 9.

‡ This paragraph has been added by Act VI of 1881, s. 4.

§ This paragraph has been inserted by Act VIII. of 1903, s. 2 (4).

|| S 246A has been inserted by Act VIII. of 1903, s. 2 (5).

unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

113. A notification in the Gazette of India that any portion of British territory has been ceded to any Native State, Prince, or Ruler,* shall be conclusive proof that a valid cession of such territory took place at the date mentioned in such notification.

114. The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case.

Illustrations.

The Court may presume—

(a) that a man who is in possession of stolen goods soon after the theft is either the thief, or has received the goods knowing them to be stolen, unless he can account for his possession,

(b) that an accomplice is unworthy of credit unless he is corroborated in material particulars;

(c) that a bill of exchange, accepted or endorsed, was accepted or endorsed for good consideration,

(d) that a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or state of things usually cease to exist, is still in existence,

(e) that judicial and official acts have been regularly performed,

(f) that the common course of business has been followed in particular cases,

(g) that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;

(h) that, if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him,

(i) that, when a document creating an obligation is in the hands of the obligor, the obligation has been discharged.

But the Court shall also have regard to such facts as the following in considering whether such maxims do or do not apply to the particular case before it—

* See, for example, *Gazette of India*, Jan. 4, 1873, Pt. I., p. 2.

to issue citations calling upon all persons claiming to have and issue citations to in- any interest in the estate of the deceased spect proceedings. to come and see the proceedings before the grant of probate or letters of administration.

The citation shall be fixed up in some conspicuous part of the Court-house, and also in the office of the Collector of the District, and otherwise published or made known in such manner as the Judge "or District Delegate" * issuing the same may direct.

† Where any portion of the assets has been stated by the petitioner to be situate within the jurisdiction of a District Judge in another Province, the District Judge issuing the same shall cause a copy of the citation to be sent to such other District Judge, who shall publish the same in the same manner as if it were a citation issued by himself, and shall certify such publication to the District Judge who issued the citation.

251. ‡ Caveats against the grant of probate or administration may be lodged with the District Judge or a District Delegate; and, immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge; and, immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased resided at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same.

Form of caveat.

252. The caveat shall be to the following effect:—

"Let nothing be done in the matter of the estate of *A. B.*, late of , deceased, who died on the day of at , without notice to *C. D.*, of ."

* The words quoted have been inserted by Act VI. of 1881, s. 9

† This paragraph has been inserted by Act VIII. of 1903, s. 2 (6)

‡ S. 251 has been substituted for the one originally enacted by Act VI. of 1881, s. 5.

Illustration.

A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it.

The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want of title.

116. No tenant of immoveable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immoveable property; and no person and of license of person in possession. who came upon any immoveable property by the license of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such license was given.

117. No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw such bill or to endorse it, nor shall any bailee or licensee be permitted to deny that his bailor or licensor had, at the time when the bailment or license commenced, authority to make such bailment, or grant such license.

Explanation 1.—The acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn.

Explanation 2.—If a bailee delivers the goods bailed to a person other than the bailor, he may prove that such person had a right to them as against the bailor.

CHAPTER IX.

OF WITNESSES.

118. All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

that the same may be presented to the District Judge, unless the District Delegate think it necessary, for the purposes of Justice, to impound the same, which he is hereby authorized to do, and in that case the same shall be sent by him to the District Judge.

254. When it shall appear to the Judge "or District Delegate" that probate of a will should be granted, he will grant the same under the seal of his Court in a manner following:—

"I, _____, Judge of the District of _____, [or Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*)],† hereby make known that, on the _____ day of _____ in the year _____, the last will of _____, late of _____, a copy whereof is hereunto annexed, was proved and registered before me, and that administration of the property and credits of the said deceased, and in any way concerning his will, was granted to _____, the executor in the said will named [he having undertaken to administer the same, and to make a full and true inventory of the said property and credits, and exhibit the same to this Court within six months from the date of this grant, or within such further time as the Court may from time to time appoint, and also to render to this Court a true account of the said property and credits within one year from the same date, or within such further time as the Court may from time to time appoint."‡

255. And, wherever it shall appear to the District Judge "or District Delegate" that letters of administration to the estate of a person deceased, with or without a copy of the will annexed, should be granted, he will grant the same under the seal of his Court in manner following.—

"I, _____, Judge of the District of _____, [or Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*)],† hereby make known that, on the _____ day of _____ in the year _____, the last will of _____, late of _____, a copy whereof is hereunto annexed, was proved and registered before me, and that administration of the property and credits of the said deceased, and in any way concerning his will, was granted to _____, the executor in the said will named [he having undertaken to administer the same, and to make a full and true inventory of the said property and credits, and exhibit the same to this Court within six months from the date of this grant, or within such further time as the Court may from time to time appoint, and also to render to this Court a true account of the said property and credits within one year from the same date, or within such further time as the Court may from time to time appoint."‡

* The words quoted in the first paragraphs of ss 254 & 255 have been inserted by Act VI of 1881, s. 9.

† In ss. 254 & 255, these words in brackets (with the brackets themselves) have been inserted by Act VI. of 1881, s. 8.

‡ These words in brackets from "he having" to the end of the section have been substituted by Act VI. of 1889, s. 4.

123. No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the Department concerned, who shall give or withhold such permission as he thinks fit.

124. No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure.

125* No Magistrate or police-officer† shall be compelled to say whence he got any information as to the commission of any offence, and no revenue-officer shall be compelled to say whence he got any information as to the commission of any offence against the public revenue.

Explanation.—"Revenue-officer" in this section means any officer employed in or about the business of any branch of the public revenue.

126. No barrister, attorney, pleader, or vakil shall, at any time, be permitted, unless with his client's express consent, to disclose any communication made to him in the course, and for the purpose, of his employment as such barrister, pleader, attorney, or vakil, by or on behalf of his client, or to state the contents or condution of any document with which he has become acquainted in the course, and for the purpose, of his professional employment, or to disclose any advice given by him to his client in the course, and for the purpose, of such employment:

Provided that nothing in this section shall protect from disclosure—

(1) any such communication made in furtherance of any illegal ‡ purpose;

* Substituted, by Act III. of 1887, for the section originally enacted.

† All the privileges which a police-officer has under s. 125 of this Act have been conferred on a Commandant or Second in Command of military police in Burma.—See the Burma Military Police Act (XV of 1887), s. 13.

‡ The word "illegal" has been substituted for the word "criminal" by the Indian Evidence Act Amendment Act (XVIII. of 1872), s. 10.

a certificate or of probate or letters of administration in respect of the estate of the deceased person, and if such previous grant is in force.

21. (1) A grant of probate or letters of administration under the Probate and Administration Act, 1881,* in respect of an estate, shall be deemed to supersede any certificate previously granted under this Act in respect of any debts or securities included in the estate.

(2) When, at the time of the grant of the probate or letters, any suit or other proceeding instituted by the holder of the certificate regarding any such debt or security is pending, the person to whom the grant is made shall, on applying to the Court in which the suit or proceeding is pending, be entitled to take the place of the holder of the certificate in the suit or proceeding.

22 Where a certificate under this Act has been superseded or is invalid by reason of the certificate having been revoked under section 18, or by reason of the grant of a certificate to a person named in an appellate order under section 19, or by reason of a certificate having been previously granted, or by reason of a grant of probate or letters of administration, or for any other cause, all payments made or dealings had, as regards debts and securities specified in the superseded or invalid certificate, to or with the holder of that certificate in ignorance of its supersession or invalidity, shall be held good against claims under any other certificate, or under the probate or letters of administration.

23. (1) Where a certificate has been granted under this Act or Act XXVII. of 1860,† or a grant of probate or letters of administration has been made, a curator appointed under Act XIX. of 1841‡ shall not exercise any authority lawfully belonging to the holder of the certificate, or to the executor or administrator:

(2) But persons who have paid debts or rents to a curator authorized by a Court to receive them shall be indemnified, and the curator shall be responsible for the payment thereof to the person who has obtained the certificate, probate, or letters of administration, as the case may be.

* Act V. of 1881 † Repealed by this Act.

‡ The Succession (Property Protection) Act, 1841.

attorney, or vakil on matters which, but for such question, he would not be at liberty to disclose.

129. No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal professional adviser, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given, but no others.

130. No witness who is not a party to a suit shall be compelled to produce his title-deeds to any property, or any document in virtue of which he holds any property as pledgee or mortgagee, or any document the production of which might tend to criminate him, unless he has agreed in writing to produce them with the person seeking the production of such deeds, or some person through whom he claims

131. No one shall be compelled to produce documents in his possession which any other person would be entitled to refuse to produce if they were in his possession, unless such last-mentioned person consents to their production.

132. A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend, directly, or indirectly, to criminate, such witness, or that it will expose, or tend, directly or indirectly, to expose, such witness to a penalty or forfeiture of any kind:

Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.

133. An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

THE FIRST SCHEDULE.

ENACTMENTS REPEALED.

(See Section 2.)

Number and year.	Subject or title.	Extent of repeal.
<i>Acts of the Governor-General in Council.</i>		
XXVII of 1860.	Collection of Debts on Successions.	So much as has not been repealed.
XIV. of 1869 ...	Bombay Civil Courts Act, 1869.	In section 16, from and inclusive of the words and figures, "Bombay Regulation VIII. of 1827," down to and inclusive of the words, "representatives of deceased persons) and"
XV. of 1874 ...	Laws Local Extent Act, 1874.	So much as relates to Act XXVII. of 1860.
XIII of 1879 ...	Oudh Civil Courts Act, 1879	Section 25, clause (3), relating to applications for certificates under Act XXVII. of 1860
V. of 1881 ...	Probate and Administration Act, 1881.	Sections 151 and 153.
XVIII. of 1884.	Punjab Courts Act, 1884.	Section 29, sub-section (1), clause (a).
XII. of 1887 ...	Bengal, North-Western Provinces, and Assam Civil Courts Act, 1887.	Section 23, sub-section (2), clause (c).

Act of the Lieutenant-Governor of Bengal in Council.

VII. of 1880* ...	Public Demands Recovery Act, 1880.	In section 7, clause (3), the words, "and the note to paragraph 12 of Schedule I."
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* Since entirely repealed by the Public Demands Recovery Act (Ben. Act I. of 1895).

It is proposed to prove that he denied the possession of the property.

The relevancy of the denial depends on the identity of the property. The Court may, in its discretion, either require the property to be identified before the denial of the possession is proved, or permit the denial of the possession to be proved before the property is identified.

(d.) It is proposed to prove a fact (A), which is said to have been the cause or effect of a fact in issue. There are several intermediate facts (B, C, and D), which must be shown to exist before the fact (A) can be regarded as the cause or effect of the fact in issue. The Court may either permit A to be proved before B, C, or D is proved, or may require proof of B, C, and D before permitting proof of A.

137. The examination of a witness by the party who calls him shall be called his examination-in-chief.

Cross-examination. The examination of a witness by the adverse party shall be called his cross-examination.

Re-examination. The examination of a witness, subsequent to the cross-examination, by the party who called him, shall be called his re-examination.

Order of examinations. **138.** Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.

The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

The re-examination shall be directed to the explanation of matters referred to in cross-examination; and if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

139. A person summoned to produce a document does not become a witness by the mere fact that he produces it, and cannot be cross-examined unless and until he is called as a witness.

Witnesses to character. **140.** Witnesses to character may be cross-examined and re-examined.

THE SECOND SCHEDULE—*Continued.*

In the Court of
On the application of *A B.* made to me on the day
of , I hereby extend this certificate to the following debts and
securities, namely :—

Debts.

Serial number.	Name of debtor.	Amount of debt, includ- ing interest, on date of application for exten- sion.	Description and date of instrument, if any, by which the debt is se- cured.

Securities.

Serial number	DESCRIPTION			Market-value of security on date of application for extension.
	Distinguish- ing number or letter of security	Name, title, or class of security.	Amount or par value of security	

This extension empowers *A B* to collect those debts [*and*] [*to receive*]
[*interest*] [*dividends*] [*on*] [*to negotiate*] [*to transfer*] [*those securities*].

Dated this day of

District Judge.

can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

146. When a witness is cross-examined, he may, in addition to the questions hereinbefore referred to, be asked any questions which tend—
Questions lawful in cross-examination.

(1) to test his veracity ;

(2) to discover who he is, and what is his position in life, or

(3) to shake his credit by injuring his character, although [the answer to such questions might tend, directly or indirectly, to criminate him, or might expose or tend, directly or indirectly, to expose him to a penalty or forfeiture.

147. If any such question relates to a matter relevant to the suit or proceeding, the provisions of section 132 shall apply thereto.
When witness to be compelled to answer.

148. If any such question relates to a matter not relevant to the suit or proceeding except in so far as it affects the credit of the witness—
Court to decide when question shall be asked, and when witness compelled to answer. by injuring his character, the Court shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit, warn the witness that he is not obliged to answer it. In exercising its discretion, the Court shall have regard to the following considerations :—

(1) such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the Court as to the credibility of the witness on the matter to which he testifies :

(2) such questions are improper if the imputation which they convey relates to matters so remote in time, or of such a character, that the truth of the imputation would not affect, or would affect in a slight degree, the opinion of the Court as to the credibility of the witness on the matter to which he testifies :

(3) such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence :

(4) the Court may, if it sees fit, draw, from the witness's refusal to answer, the inference that the answer, if given, would be unfavourable.

ACT XIX. OF 1841

[The Succession (Property Protection) Act, 1841].*

PASSED ON THE 6TH SEPTEMBER 1841.

*An Act for the Protection of Moveable and Immoveable Property
against Wrongful Possession in cases of Successions.*

WHEREAS much inconvenience has been experienced where
persons have died possessed of move-
Preamble. able and immoveable property, and the
same has been taken upon pretended claims of right by gift or
succession; the difficulty of ascertaining the precise nature of the
moveable property in such cases, the opportunities for misappropriating such property and also the profits of real property, the
delays of a regular suit when vexatiously protracted, and the inability of heirs when out of possession to prosecute their rights,
affording strong temptations for the employment of force or fraud in
order to obtain possession: and whereas, from the above causes, the

* This is the short title given by the Indian Short Titles Act (XIV. of 1897).

The Succession (Property Protection) Act (XIX. of 1841) has been declared to be in force in the whole of British India (except as regards the Scheduled Districts) by the Laws Local Extent Act (XV. of 1874), s. 3.

Act XIX of 1841 has been declared in force in the Arakan Hill District (with modifications and with the exception of s. 16) by the Arakan Hill District Laws Regulation (IX of 1874).

The Act has been extended to Sindh by Bom Act XII of 1866 (Courts, Sindh), s. 12

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act (XIV of 1874), to be in force in the following Scheduled Districts, namely —

- (1) The Taluqs of Bhadrachalam and Rakapilli and the Rampa Country (see *Gazette of India*, 1879, Pt. I, p. 630):
- (2) Sindh (see *Gazette of India*, 1880, Pt. I, p. 672):
- (3) West Jalpaiguri (see *Gazette of India*, 1881, Pt. I, p. 74):
- (4) The District of Hazaribagh (see *Gazette of India*, 1881, Pt. I, p. 507):

no evidence shall be given to contradict him ; but, if he answers falsely, he may afterwards be charged with giving false evidence.

Exception 1.—If a witness is asked whether he has been previously convicted of any crime, and denies it, evidence may be given of his previous conviction.

Exception 2.—If a witness is asked any question tending to impeach his impartiality, and answers it by denying the facts suggested, he may be contradicted.

Illustrations

(a.) A claim against an underwriter is resisted on the ground of fraud.

The claimant is asked whether, in a former transaction he had not made a fraudulent claim. He denies it.

Evidence is offered to show that he did make such a claim.

The evidence is inadmissible

(b.) A witness is asked whether he was not dismissed from a situation for dishonesty. He denies it

Evidence is offered to show that he was dismissed for dishonesty :

The evidence is not admissible.

(c.) A affirms that on a certain day he saw B at Lahore

A is asked whether he himself was not on that day at Calcutta. He denies it

Evidence is offered to show that A was on that day at Calcutta

The evidence is admissible, not as contradicting A on a fact which affects his credit, but as contradicting the alleged fact that B was seen on the day in question in Lahore

In each of these cases the witness might, if his denial was false, be charged with giving false evidence.

(d.) A is asked whether his family has not had a blood-feud with the family of B against whom he gives evidence

He denies it. He may be contradicted on the ground that the question tends to impeach his impartiality.

154. The Court may, in its discretion, permit the person

Question by party to his own witness. who calls a witness to put any questions to him which might be put in cross-examination by the adverse party.

155. The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him—
(Impeaching credit of witness.)

such proceedings shall be required by or on behalf of parties giving satisfactory proof that they are likely to be materially prejudiced if left to the ordinary remedy of a regular suit—

1. It is hereby enacted that, whenever a person dies leaving property, moveable or immoveable, it shall be lawful for any person claiming succession to property of deceased may apply for relief against wrongful possession. a right by succession thereto, or to any portion thereof, to make application to the Judge of the Court of the district where any part of the property is found or situate for relief, either after actual possession has been taken by another person, or when forcible means of seizing possession are apprehended.

2. It shall be lawful for any agent, relative, or near friend, or Agent, &c., may apply in for the Court of Wards in cases with-
behalf of minor, &c. in their cognisance, in the event of any minor, disqualified, or absent person being entitled by succession to such property as aforesaid, to make the like application for relief.

3. The Judge to whom such application shall be made shall, in the first place, enquire by the Enquiry made by Judge. solemn declaration of the complainant, and by witnesses and documents at his discretion, whether there be strong reasons for believing that the party in possession, or taking forcible means for seizing possession, has no lawful title, and that the applicant, or the person on whose behalf he applies, is really entitled, and is likely to be materially prejudiced if left to the ordinary remedy of a regular suit, and that the application is made *bond fide*.

4. In case the Judge shall be satisfied of the existence of such strong ground of belief, but not otherwise, he shall cite the party complained of, and give notice of vacant or disturbed possession by publication, and, after the expiration of a reasonable time, shall determine summarily the right to possession (subject to regular suit as hereinafter mentioned), and shall deliver possession accordingly: provided always that the Determination of right. Judge shall have the power to appoint an officer who shall take an inventory of effects, and seal or otherwise secure the same, upon being applied to for the purpose, without delay, whether he shall have concluded the enquiry necessary for citing the party complained of or not.

Illustration.

A, an accomplice, gives an account of a robbery in which he took part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed:

Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.

157. In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

Former statements of witness may be proved to corroborate later testimony as to same fact.

158. Whenever any statement relevant under section 32 or 33 is proved, all matters may be proved, either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person had been called as a witness, and had denied upon cross-examination the truth of the matter suggested.

159. A witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory.

Refreshing memory.

The witness may also refer to any such writing made by any other person and read by the witness within the time aforesaid, if, when he read it, he knew it to be correct.

Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the Court, refer to a copy of such document: Provided the Court be satisfied that there is sufficient reason for the non-production of the original.

An expert may refresh his memory by reference to professional treatises.

160. A witness may also testify to facts mentioned in any such document as is mentioned in section 159, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.

Testimony to facts stated in document mentioned in section 159.

able, shall be taken generally to answer all cases for which the person may be afterwards appointed curator, yet no delay in the taking of security shall prevent the Judge from immediately investing the curator with the powers of his office.

8. Where the estate of the deceased person shall consist, wholly or in part, of land paying revenue to Government, in all matters regarding the propriety of citing the party in possession, of appointing a curator, and of nominating individuals to that appointment, the Judge shall demand a report from the Collector, and the Collector is hereby required to furnish the same. In cases of urgency, the Judge may proceed, in the first instance, without such report, and he shall not be obliged to act in conformity thereto; but, in case of his acting otherwise than according to such report, he shall immediately forward a statement of his reasons to the Court of Sadr Diwān Adalat, and the Court of Sadr Diwān Adalat, if they shall be dissatisfied with such reasons, shall direct the Judge to proceed conformably to the report of the Collector.

9. The curator shall be subject to all orders of the Judge regarding the institution or the defence of suits, and all suits may be instituted or defended in the name of the curator on behalf of the estate. Provided that an express authority shall be requisite in the sanad of the curator's appointment for the collection of debts or rents; but such express authority shall enable the curator to give a full acquittance for any sums of money received by virtue thereof.

10. Pending the custody of the property by the curator, it shall be lawful for the Judge to make allowances to apparent owners pending custody by such allowances to parties having a curator. *prima-facie* right thereto as, upon a summary investigation of the rights and circumstances of the parties interested, he shall consider that necessity may require taking, at his discretion, security for the repayment thereof with interest, in case the party shall, upon the adjudication of the summary suit, appear not to be entitled thereto.

11. The curator shall file monthly accounts in abstract, and Accounts to be filed by at the period of every three months, if curator. his administration last so long, and, upon

Illustration.

A sues B on an agreement, and gives B notice to produce it. At the trial, A calls for the document, and B refuses to produce it. A gives secondary evidence of its contents. B seeks to produce the document itself to contradict the secondary evidence given by A, or in order to show that the agreement is not stamped: He cannot do so.

165. The Judge may, in order to discover, or to obtain proper proof of, relevant facts ask any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties, nor their agents, shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question:

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved:

Provided also that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document, which such witness would be entitled to refuse to answer or produce under sections 121 to 131, both inclusive, if the question were asked, or the document were called for, by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.

166. In cases tried by jury or with assessors, the jury or assessors may put any questions to the witnesses, through or by leave of the Judge, which the Judge himself might put, and which he considers proper.

CHAPTER XI.

OF IMPROPER ADMISSION AND REJECTION OF EVIDENCE.

167. The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court before

No new trial for improper admission or rejection of evidence.

decease in the event of minority or otherwise, in opposition to such directions; but in every such case, so soon as the Judge having jurisdiction over the property of a deceased person shall be satisfied of the existence of such directions, he shall give effect thereto.

16. This Act shall not be in force for the purpose of disturbing the possession of the Court of Wards to be made curator in case of Wards of any Presidency; and in case minors having property subject to its jurisdiction. a minor or other disqualified person whose property shall be subject to the Court of Wards shall be the party on whose behalf application is made under this Act, the Judge, if he determines to cite the party in possession, and also appoint a curator, shall invest the Court of Wards with the curatorship of the estate, pending the suit, without taking such security as aforesaid, and in case the minor or other disqualified person shall, upon the adjudication of the summary suit, appear to be entitled to the property, possession shall be delivered to the Court of Wards.

17. Nothing in this Act contained shall be any impediment to Saving of right to bring the bringing of a regular suit, either by regular suit. the party whose application may have been rejected before or after citing the party in possession, or by the party who may have been evicted from the possession, under this Act.

18. The decision of the Judge upon the summary suit under Effect of decision on summary suit. this Act shall have no other effect than that of settling the actual possession; but for this purpose it shall be final, not subject to any appeal or order for review.

19. It shall be lawful for the Governments of the respective Appointment of public Presidencies to appoint public curators curators. for any district or number of districts. And the Judge having jurisdiction shall nominate such public curator or curators in all cases where the choice of a curator is left discretionary with him under the preceding provisions of this Act.

20. *[Power to appoint Ecclesiastical Registrar or Curators to receive effects in certain cases.] Repealed by Act VIII. of 1855, s. 13.*

SCHEDULE—(*contd.*)ENACTMENTS REPEALED—(*contd.*)(*See section 2.*)

Number and year.	Title	Extent of repeal.
Act XV. of 1852.	To amend the Law of Evidence.	So much as has not been heretofore repealed.
Act XIX. of 1853.	To amend the Law of Evidence in the Civil Courts of the East India Company in the Bengal Presidency.	Section 19.
Act II. of 1855.	For the further improvement of the Law of Evidence.	So much as has not been heretofore repealed
Act XXV. of 1861.	For simplifying the procedure of the Courts of Criminal Jurisdiction not established by Royal Charter	Section 237.
* * * *	* * * *	* * * *

* The entry relating to ss. 7 and 8 of the General Clauses Act (I. of 1868) has been repealed by the General Clauses Act (X. of 1897).

ACT VII. OF 1887:

The Suits' Valuation Act, 1887.*

RECEIVED THE G.-G.'S ASSENT ON THE 11TH FEBRUARY 1887.

An Act to prescribe the mode of valuing certain Suits for the purpose of determining the Jurisdiction of Courts with respect thereto.

WHEREAS it is expedient to prescribe the mode of valuing certain suits for the purpose of determining the jurisdiction of Courts with respect thereto ; It is hereby enacted as follows :—

Title. 1. This Act may be called the Suits' Valuation Act, 1887.

PART I.

SUITS RELATING TO LAND.

2. This Part shall extend to such local areas, and come into force therein on such dates, as the Governor-General in Council, by notification in the *Gazette of India*, directs.†

* For Statement of Objects and Reasons see *Gazette of India*, 1886, Pt V, p 791, for Report of the Select Committee see *ibid* 1887, Pt. IV., p 18, and for Proceedings in Council see *ibid* 1886 Supplement, pp. 1131 and 1155 and *ibid*, 1887 Pt VI, pp 16 and 21

Act VII of 1887 has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act (XIII. of 1898).—See s. 4 and the First Schedule

It had previously been extended there by notification under s 5 of the Scheduled Districts Act (XIV of 1874) —See *Burma Gazette* 1888 Pt. I. p. 362

It has been declared in force in British Baluchistan by the British Baluchistan Laws Regulation (I of 1890)

† Part I of the Act has under s 2, been declared to extend to the Punjab, and to come into force therein on the 1st day of March 1889.—See *Gazette of India*, 1889, Pt I, p 107

(4) "legal proceeding" means any proceeding or inquiry in which evidence is or may be given, and includes an arbitration :

(5) "the Court" means the person or persons before whom a legal proceeding is held or taken :

(6) "Judge" means a Judge of a High Court :

(7) "trial" means any hearing before the Court at which evidence is taken ; and

(8) "certified copy" means a copy of any entry in the books of a bank, together with a certificate written at the foot of such copy that it is a true copy of such entry ; that such entry is contained in one of the ordinary books of the bank, and was made in the usual and ordinary course of business ; and that such book is still in the custody of the bank, such certificate being dated and subscribed by the principal accountant or manager of the bank with his name and official title.

3. The Local Government may, from time to time, by notification in the official Gazette, extend the provisions of this Act to the books of any partnership or individual carrying on the business of bankers within the territories under its administration, and keeping a set of not less than three ordinary account-books, namely, a cash-book, a day-book or journal, and a ledger, and may, in like manner, rescind any such notification.

4. Subject to the provisions of this Act, a certified copy of any entry in a banker's book shall, in all legal proceedings, be received as *prima-facie* evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions, and accounts therein recorded in every case where, and to the same extent as, the original entry itself is now by law admissible, but not further or otherwise.

5. No officer of a bank shall, in any legal proceeding to which the bank is not a party, be compellable to produce any banker's book, the contents of which can be proved under this Act, or to appear as a witness to prove the matters, transactions, and accounts, therein recorded, unless by order of the Court or a Judge made for special cause.

6. (1) On the application of any party to a legal proceeding, the Court or a Judge may order that such party be at liberty to inspect and

8. Where, in suits other than those referred to in the Court Fees Act, 1870,* section 7, paragraphs v, vi., and ix., and paragraph x., clause (d), court-fees are payable *ad valorem* under the Court Fees Act, 1870,* the value as determinable for the computation of court-fees and the value for purposes of jurisdiction shall be the same.

9. When the subject-matter of suits of any class, other than suits mentioned in the Court Fees Act, 1870,* section 7, paragraphs v. and vi., and paragraph x., clause (d), is such that, in the opinion of the High Court, it does not admit of being satisfactorily valued, the High Court may, with the previous sanction of the Local Government, direct that suits of that class shall, for the purposes of the Court Fees Act, 1870,* and of this Act and any other enactment for the time being in force, be treated as if their subject-matter were of such value as the High Court thinks fit to specify in this behalf.†

10. [*Repeal of s. 32, Punjab Courts Act (XVIII. of 1884).*]
Repealed by the Repealing and Amending Act (XII. of 1891).

PART III.

SUPPLEMENTAL PROVISIONS.

11. (1) Notwithstanding anything in section 578 of the Code of Civil Procedure ‡ an objection, that, by reason of the over-valuation or under-valuation of a suit or appeal, a Court of first instance or Lower Appellate Court, which had not jurisdiction with respect to the suit or appeal, exercised jurisdiction with respect thereto, shall not be entertained by an Appellate Court unless—

* Act VII. of 1870.

† For rules as to valuation of certain classes of suits under this section in—

(1) the Central Provinces, *see* the Central Provinces List of Local Rules and Orders, Ed. 1896, p. 246 ;

(2) Oudh, *see* North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p. 122.

‡ This reference to s. 578 of Act XIV. of 1882 should now be meant to apply to s. 99 of Act V. of 1908 (the new Code) — *See* s. 158 of the latter Act.

ACT NO. I. OF 1893.*

The Bankers' Books Evidence Act, 1893.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

Received the G.-G.'s assent on the 20th January 1893

An Act to extend the provisions of the Bankers' Books Evidence Act, 1891,† to the books of Post Office Savings Banks and Money Order Offices.

WHEREAS it is expedient to extend the provisions of the Bankers' Books Evidence Act, 1891,† to the books of the Savings Banks and Money Order Offices of the Post Office, It is hereby enacted as follows:—

Short title and commencement. 1. (1) This Act may be called "The Bankers' Books Evidence Act, 1893;" and

(2) It shall come into force at once.

Addition to definition of "bank" and "banker" in section 2, sub-section (2), of Act XVIII. of 1891. 2 After clause (b) of sub-section (2) of section 2 of the said Bankers' Books Evidence Act, 1891,† the following clause shall be added, namely:—

[*Vide supra*, p. 77.]

* For Statement of Objects and Reasons, see *Gazette of India*, 1893 Pt V, p 15; for Proceedings in Council, see *ibid*, Pt VI, pp 12 and 27.

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See *Gazette of India*, 1895, Pt I., p. 541

† Act XVIII. of 1891.—See p 77, *supra*.

ACT NO. IV. OF 1882.

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used in commerce, s. 32, para. 2.

in Council, the Lieutenant-Governor of the Punjab, and the Chief Commissioner of British Burma.*

But any of the said Local Governments may, from time to time, by notification in the local official Gazette, extend† this Act "or any part thereof"‡ to the whole of any specified part of the territories under its administration.

"And any Local Government may, with the previous sanction of the Governor-General in Council, from time to time, by notification in the local official Gazette, exempt,§ either retrospectively or prospectively, any part of the territories administered by such Local Government from all or any of the following provisions, namely :—

"Section 54, paragraphs 2 and 3, 59, 107, and 123."

Notwithstanding anything in the foregoing part of this section, sections 54, paragraphs 2 and 3, 59, 107, and 123 shall not extend or be extended to any district or tract of country for the time being excluded from the operation of the Indian Registration Act, 1877,¶ under the power conferred by the first section of that Act or otherwise.**

* This reference to British Burma should now be read as referring to Lower Burma.—*See* the Upper Burma Laws Act (XX. of 1885), s. 4, and now the Burma Laws Act (XIII of 1898), by which, Act XX. of 1885 has been repealed. The Chief Commissioner is now Lieutenant-Governor of Burma.—*See* Proclamation, dated 9th April 1897, in *Gazette of India*, 1897, Pt. I., p. 261.

† Act IV. of 1882 has, from the 1st January 1893, been extended to—

- (1) the whole of the territories (other than the Scheduled Districts) under the administration of the Government of Bombay (*see Bombay Government Gazette*, 1892, Pt. I., p. 10711; and
- (2) the area included within the local limits of the ordinary civil jurisdiction of the Recorder of Rangoon (*see Burma Gazette*, 1892, Pt. I., p. 373).

‡ The words quoted have been inserted by Act VI. of 1904.

§ No such exemption has yet been made.

¶ The two clauses quoted have been substituted for the original clause by the Transfer of Property Act (1882) Amendment Act (III. of 1885), s. 1. S. 54, paras. 2 and 3, and ss 59, 107, and 123 of the Transfer of Property Act, 1882, with respect to the transfer of property by registered instrument, shall, on and from the commencement of the Cantonments Act (XIII. of 1889), extend to every cantonment in British India.—*See* the Cantonments Act (XIII. of 1889), s. 32 (1).

¶ Act III. of 1877.

** This clause has been added by Act III. of 1885, s. 2, and is to be deemed to have been added from the date on which Act IV. of 1882 came into force.

- Evidence, admissible when statement forms part of conversation, book, &c.,**
 s 39.
 documentary, ss 61-90.
 exclusion of oral by documentary, ss 91-100.
 inadmissible as to meaning of language when document applies
 accurately to existing facts, s 94.
 of affairs of State, admissibility of, s 123
 of attorney, barrister, &c, ss 126-128.
 of contemporaneous agreement varying terms of document, who
 may give, s 99
- Evidence by dumb witness, mode of giving, s 119**
 of fact when not admissible under Civil Procedure law, s. 5, expl.
 of husband or wife, ss 120-122
 of oral agreement varying terms of contract, &c, exclusion of,
 s 92
 of parties to suits s 120
 of judge or magistrate, s 121.
 of public officer, s 124.
 of magistrate or police-officer, s 125
 of interpreter, ss 127-128
 of terms of contract, &c, in form of document, s 91
 of witness when relevant for proving, in subsequent proceeding,
 truth of facts stated, s 33
 oral, ss 59, 60
 must be direct, s 60
 proof of facts by, s 59
 primary, s 62
 secondary, ss 63, 65, 66
 to explain ambiguous or defective document, exclusion of, s 93.
 judge to decide admissibility of, s 136
 what matters may be proved when relevant statement proved under
 s 32 or 33 s 158
 improper admission of, when no ground for new trial, s 167.
 improper rejection of, when no ground for new trial, s 167
- Examination. See Evidence**
 of witness as to written document or contents, s. 144
 of witness See *Witness*
- Examination-in-chief of witness, meaning of, s 137**
 must relate to relevant facts, s 138
 leading question, when may be asked, s.
 142
 leading question, when may not be asked, s.
 142
 when cross-examination question may be
 asked in, s 154
- Examinations of witness, order of, s 138**
- Exclusion of evidence to explain ambiguous or defective document, s 93**
 as to meaning of language when document applies
 accurately to existing facts, s 94
 of oral agreement varying terms of written contract,
 &c, s 92.

“‘actionable claim’ means a claim to any debt, other than a debt secured by mortgage of immovable property, or by hypothecation or pledge

‘actionable claim :’

property, or by hypothecation or pledge

of moveable property, or to any beneficial interest in moveable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional, or contingent :”*

and a person is said to have “notice” of a fact when he actually knows that fact, or when, but for

“notice.”

wilful abstention from an inquiry or

search which he ought to have made, or gross negligence, he would have known it, or when information of the fact is given to or obtained by his agent under the circumstances mentioned in the Indian Contract Act, 1872,† s. 229.

Enactments relating to contracts to be taken as part of Act IX. of 1872.

4. The chapters and sections of this Act which relate to contracts shall be taken as part of the Indian Contract Act, 1872.†

‡ And sections 54, paragraphs 2 and 3, 59, 107, and 123 shall be read as supplemental to the Indian Registration Act, 1877.‡

CHAPTER II.‡

OF TRANSFERS OF PROPERTY BY ACT OF PARTIES.

(A.)—*Transfer of Property, whether Moveable or Immoveable.*

5. In the following sections “transfer of property” means

“Transfer of property” an act by which a living person conveys defined. property, in present or in future, to one or more other living persons, or to himself and one or more other living persons, and “to transfer property” is to perform such act.

* This definition of “actionable claim” has been inserted by the Transfer of Property Act (II. of 1900), s. 2.

† Act IX. of 1872.

‡ This paragraph has been added by the Transfer of Property Act (1882) Amendment Act (III. of 1885), s. 3.

§ See the Indian Registration Act (III. of 1877).

|| Nothing in Ch. II. is to be deemed to affect any rule of Hindu, Muhammadan, or Buddhist law.—See s. 2, *supra*.

- Facts, not requiring proof, ss 56-58.**
 judicially noticed, s 56.
 proof of, by oral evidence, s 59
Fast, public, when judicially noticed, s 57.
Festivals, public, when judicially noticed, s 57
Flag, national, of Foreign State, &c, when judicially noticed, s 57.
Foreign expressions, evidence admissible to show meaning of, s 98
 judicial records, presumption as to certified copies of, s 86.
 law, opinions of experts on relevancy of, s 45.
Forfeiture, witness not excused from answering on ground of exposure to,
 ss. 132, 146, 147.
Fraud in obtaining judgment may be proved, s 44.
Fraudulently acting, a fact, s 3, ill. (d)
Functions of Indian public officers when judicially noticed, s 57.

G.

- Gazette, statement made in, s 37.**
 presumption as to genuineness of, s 81
Gazette of India, notice in, of cession of British territory proof of, s 113.
General Clauses Act, 1869, ss 7 and 8 repealed, s 2 and schd
General custom or right defined, s 48
Genuineness of documents, &c See Presumption
Geographical divisions of the world, when Court must take judicial notice
 of, s 57.
Good character, relevancy of, in criminal proceedings, s 53.
 faith, acting in, is a fact, s 3, ill (d)
 fact showing existence of, s 14
 burden of proof where one party stands in position of active
 confidence, s 111
Good will, facts showing existence of, s 14
Government See Notifications of Government
 Gazette of Local Government, &c, presumption as to
 genuineness of, s 81.
Grant, evidence of terms of, when in form of document, s 91.
 examination of witness as to its being in writing s 144.
 exclusion of evidence of oral agreement varying terms of, when
 in form of document, s 92
Grounds of opinion. See Opinion

H.

- Handwriting, identity of, relevancy of opinions of experts on, s 45.**
 proof of, when necessary, s 67
 relevancy of opinions as to, s 47
High Court certain questions asked by attorney, &c., without reasonable
 grounds may be reported to, s 150
Highly improbable, s 11 (2).
 probable, s 11 (2)
Holidays, public, when judicially noticed, s 57
Hostilities between British Crown and other States, &c., commencement,
 &c., of, judicially noticed, s 57.

own, is competent to transfer such property, either wholly or in part, and either absolutely or conditionally, in the circumstances, to the extent, and in the manner, allowed and prescribed by any law for the time being in force.

8. Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property, and in the legal incidents thereof.

Operation of transfer.

Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth ;

and where the property is machinery attached to the earth, the moveable parts thereof ;

and, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows, and all other things provided for permanent use therewith ;

and where the property is a debt or other actionable claim, the securities therefor (except where they are also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer ;

and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect.

9. A transfer of property may be made without writing in every case in which a writing is not expressly required by law.

Oral transfer.

10. Where property is transferred subject to a condition or limitation, absolutely restraining the transferee or any person claiming under him from parting with, or disposing of, his interest in the property, the condition or limitation is void except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him : provided that property may be transferred to or for the benefit of a woman (not being a Hindu, Muhammadan, or Buddhist), so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein.

Condition restraining alienation.

- Insulting questions, Court to forbid, s 152
- Intention, having an, is a fact, s 3, ill. (2).
 - facts showing, s 14.
- Intentional act, s 15
- Interest, statement against, s 32, para 3.
- Interpretation-clause, s 3
- Interpreter See *Translator*.
 - communication made to, when disclosable, s 127.
 - when not disclosable, s, 127.
 - waiver of privilege, s 128.
- Introduction of fact in issue or relevant fact, s 9.

J.

- Journals, presumption as to, s 81.
- Judge when compellable to answer question as to conduct or judicial knowledge, s 121.
- Judge may be examined as to other matters which occurred in his presence, s 121
 - power of, as to translation of document produced by witness, s 162
 - must decide upon proved relevant facts, s 165
 - power of, to compel person to write for comparison, s 73
 - to decide as to relevancy of facts, s 136
 - to inspect document produced by witness, s 162
 - to examine witness, and order production of document, s 165
- Judgment, fraud or collusion in obtaining, or incompetency of Court, may be proved, s 44
- Judgments, &c, of Courts of justice when relevant, ss 40-44
 - when relevant to bar second suit or trial, s 40
 - in probate, &c, jurisdiction, of what conclusive proof, s 41
 - relevancy of, s 41
 - in other than probate, &c, jurisdiction, relevancy and effect of, s 42
 - other than above, when relevant, s 43
 - must be based upon proved relevant facts, s 165
- Judicial notice, facts of which Court must take, s 57
 - takes not necessary to prove, s 56
- Judicial proceedings before Courts and Courts-martial, Act applicable to, s 1
- Jury, questions to witness by, s 166

K.

- Knowledge, facts showing existence of, s 14

L

- Landlord and tenant, burden of proof as to relationship in case of, s 109
- estoppel of tenant from denying title of, s. 116.

15. If, on a transfer of property, an interest therein is created for the benefit of a class of persons
 Transfer to class, some of whom come under sections 13 and 14
 with regard to some of whom such interest fails by reason of any of the rules contained in sections 13 and 14, such interest fails as regards the whole class.

16. Where an interest fails by reason of any of the rules contained in sections 13, 14, and 15,
 Transfer to take effect on failure of prior transfer.
 any interest created in the same transaction, and intended to take effect after or upon failure of such prior interest, also fails.

17 The restrictions in sections 14, 15, and 16 shall not apply to property transferred for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety, or any other object beneficial to mankind
 Transfer in perpetuity for benefit of public.

18. Where the terms of a transfer of property direct that the income arising from the property shall be accumulated, such direction shall be void, and the property shall be disposed of as if no accumulation had been directed
 Direction for accumulation.

Exception.—Where the property is immoveable, or where accumulation is directed to be made from the date of the transfer, the direction shall be valid in respect only of the income arising from the property within one year next following such date; and, at the end of the year, such property and income shall be disposed of respectively as if the period during which the accumulation has been directed to be made had elapsed.

19. Where, on a transfer of property, an interest therein is created in favour of a person without specifying the time when it is to take effect, or in terms specifying that it is to take effect forthwith, or on the happening of an event which must happen, such interest is vested, unless a contrary intention appears from the terms of the transfer.
 Vested interest.

A vested interest is not defeated by the death of the transferee before he obtains possession.

Explanation —An intention that an interest shall not be vested is not to be inferred merely from a provision whereby the enjoy-

- Marriage, communications during, privileged from disclosure s. 122.
 not generally admissible, s. 122.
 when admissible, s. 122
- Matrimonial jurisdiction, relevancy of judgments in, s. 41
- Matters of State, document produced by witness referring to, s. 162.
- "May presume," defined, s. 4
- Meaning of words or terms, relevancy of opinions as to, s. 49
- Memorandum of evidence, presumption as to, s. 80.
- Mental condition included in "fact," s. 3
- Mind, state of See *Relevancy of Facts*
- Mortgagee, production of mortgage-instrument by, s. 130.
- Motive for fact in issue or relevant fact, s. 8
- Municipal body in British India, proof of proceedings of, s. 88.

N.

- Names of Indian public officers, when Court must take judicial notice of, s. 57.
- National flag of foreign state, &c, when Court must take judicial notice of, s. 57.
- Native states, proof of cession to, s. 113
- Navy of Her Majesty See *Articles of War*.
- Negligence, facts showing existence of, s. 14
- New matter introduced in re-examination, s. 138.
 cross-examination upon, s. 138
- Newspapers, presumption as to genuineness of, s. 81.
- New trial, improper admission or rejection of evidence, when no ground for, s. 167.
- Non-existence of facts, evidence of, s. 5
- Notary public, seal of, judicially noticed, s. 57.
- Notice to produce, rules as to, s. 66
 See *Presumption*
 document produced under, party producing, entitled to have it in evidence, s. 163
 if production refused, when party refusing can afterwards give document in evidence, s. 164.
- Notification in *Gazette of India* of cession of British territory, s. 113
- Notifications, statement of fact in Government, s. 37.
 of Government, how proved, s. 78.
- "Not proved," when a fact is said to be, s. 3.
- Number of witnesses, s. 134.

O.

- Obsolete expressions, evidence admissible to show meaning of, s. 98
- Occasion of relevant facts or facts in issue, s. 7.
- Offence, conspiracy to commit, s. 10.
 source of information as to commission of, magistrate, and police-officer not compellable to disclose, s. 125
- Offensive questions, Court to forbid needlessly, s. 152.
- Officer, affidavits presented to, Act not applicable to, s. 1.
- Official character, presumption as to, s. 79.

24. Where, on a transfer of property, an interest therein is

Transfer to such of certain persons as survive at some period not specified. to accrue to such of certain persons as shall be surviving at some period, but the exact period is not specified, the interest shall go to such of them as shall be alive when the intermediate or precedent interest ceases to exist unless a contrary intention appears from the terms of the transfer.

Illustration

A transfers property to B for life, and after his death to C and D equally to be divided between them, or to the survivor of them. C dies during the life of B. D survives B. At B's death the property passes to D.

25. An interest created on a transfer of property, and dependent upon a condition, fails if the

Conditional transfer. fulfilment of the condition is impossible, or is forbidden by law, or is of such a nature that, if permitted, it would defeat the provisions of any law, or is fraudulent, or involves or implies injury to the person or property of another, or the Court regards it as immoral or opposed to public policy.

Illustrations.

(a.) A lets a farm to B on condition that he shall walk a hundred miles in an hour. The lease is void.

(b.) A gives Rs. 500 to B on condition that he shall marry A's daughter, C. At the date of the transfer, C was dead. The transfer is void.

(c.) A transfers Rs 500 to B on condition that she shall murder C. The transfer is void.

(d.) A transfers Rs 500 to his niece C if she will desert her husband. The transfer is void.

26. Where the terms of a transfer of property impose a

Fulfilment of condition precedent. condition to be fulfilled before a person can take an interest in the property, the condition shall be deemed to have been fulfilled if it has been substantially complied with.

Illustrations.

(a.) A transfers Rs 5,000 to B on condition that he shall marry with the consent of C, D, and E. E dies. B marries with the consent of C and D. B is deemed to have fulfilled the condition.

(b.) A transfers Rs 5,000 to B on condition that he shall marry with the consent of C, D, and E. B marries without the consent of C, D, and E, but obtains their consent after the marriage. B has not fulfilled the condition.

- Pleader, certain questions asked by, without reasonable grounds, may be reported to High Court, s 150
 communication made to, by or for client, when disclosable, s 126
 when not disclosable, s 126
 waiver of privilege, s 128.
- Pledgee, production of document by, s 130
- Police officer, confession to, not provable against accused, s 25
 while in custody of, when provable against accused s 26
 how much provable against accused, s 27.
- not compellable to disclose whence information obtained, s 125
- Portrait, statement made on family, s 32, para 6
- Position in life of witness, questions in cross-examination to discover, ss 146, 150
 not to be asked without reasonable grounds, s 149
 when Court may report asking of question to High Court, s. 150
- Power of Judge. See *Judge*
- Powers-of-attorney, presumption as to, s 85
- Preparation for fact in issue or relevant fact, s. 8
- Presumption See *Death*.
 as to document produced as record of evidence, s 80
 certified copies of foreign judicial records, s 86
 books, maps, and charts, s 17
 execution, &c, of document not produced after notice s 89
 documents thirty years old, s 90
 existence of probable facts, s 114
 genuineness of book of laws and reports of decisions, s 84.
 certified copies, &c, s 79
 document admissible in England or Ireland without proof of seal or signature, s 82
 gazettes, newspapers, copies of private Acts of Parliament, and other documents, s 81.
 maps and plans, s 83
 powers-of-attorney, s. 85
 telegraph messages, s 88.
- Presumptions as to documents, ss 79 90.
- Previous conviction See *Conviction*
- Primary evidence, how far counterpart is, s 62
 printed document, &c, is, s 62
 meaning of, s 62
 proof of document by, s 64
- Principal and agent, burden of proof as to relationship in case of, s 109.
- Printed document, how far primary evidence, s 62
 words are 'documents,' s 3

Prior disposition not affected by invalidity of ulterior disposition.

30. If the ulterior disposition is not valid, the prior disposition is not affected by it.

Illustration.

A transfers a farm to B for her life, and, if she do not desert her husband, to C. B is entitled to the farm during her life as if no condition had been inserted.

31. Subject to the provisions of section 12, on a transfer of property, an interest therein may be created with the condition superadded that it shall cease to exist in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.

Illustrations.

(a) A transfers a farm to B for his life, with a proviso that, in case B cuts down a certain wood, the transfer shall cease to have any effect. B cuts down the wood. He loses his life-interest in the farm.

(b) A transfers a farm to B, provided that, if B shall not go to England within three years after the date of the transfer, his interest in the farm shall cease. B does not go to England within the term prescribed. His interest in the farm ceases.

32. In order that a condition that an interest shall cease to exist may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of the creation of an interest.

33. Where, on a transfer of property, an interest therein is created subject to a condition that the person taking it shall perform a certain act, but no time is specified for the performance of the act, the condition is broken when he renders impossible, permanently or for an indefinite period, the performance of the act.

34. Where an act is to be performed by a person either as a condition to be fulfilled before an interest created on a transfer of property is enjoyed by him, or as a condition on the non-fulfilment of which the interest is to pass from him to another person, and a time is specified for the performance of the act, if such performance within the specified time is prevented by

- Proof, of documents by primary evidence, s. 64.
 of execution of document required by law to be attested, s. 68.
 when attesting witness cannot be found, or execution in the United Kingdom, s. 69.
 when attesting witness denies execution, s. 71
- facts by oral evidence, s. 59
 handwriting and signature when necessary, s. 67.
 public document by production of certified copy, s. 77.
 wills under Indian Succession Act, s. 91
 legitimacy, in what cases birth during valid marriage conclusive, s. 112
 fact, no particular number of witnesses necessary, s. 134.
- 'Proper custody' defined, s. 90
 Protest of captain when relevant, s. 32, ill (k)
 'Proved' when a fact is, s. 3
 Provincial expressions, evidence admissible to show meaning of, s. 98
 Public book, register, or record, entry in, s. 35.
 documents, s. 74
 certified copies of, s. 76
 proof of, by production of certified copies, s. 77.
 certain, s. 78
 festivals, &c, when Court must take judicial notice of, s. 57.
 officer, proof of appointment of, s. 91
 when not compellable to disclose official communications, s. 124.
 officers, Indian, accession to office, &c., of, when Court must take judicial notice of, s. 57
 record, &c, relevancy of entry in, made in performance of duty, s. 35.
 right, statement as to, s. 32, para 4.

Q.

- Question asked without reasonable grounds, when may be reported to High Court, s. 150.
See Attorney, Leading Question, Relevancy of Facts, Veracity of Witness, Witness, etc.

R.

- Rape, impeaching credit of prosecutrix for, s. 155, cl. (4).
 Rashness, facts showing existence of, s. 14.
 Recitals in Acts or notifications, s. 37
 Record of evidence, presumption as to documents purporting to be, s. 80
 Re-examination of witness, meaning of, s. 137
 on new matter introduced by permission of Court, s. 138.
 to what directed, s. 138.
 to character, s. 140.

Exception to the last-preceding four rules.—Where a particular benefit is expressed to be conferred on the owner of the property which the transferor professes to transfer, and such benefit is expressed to be in lieu of that property, if such owner claim the property, he must relinquish the particular benefit, but he is not bound to relinquish any other benefit conferred upon him by the same transaction.

Acceptance of the benefit by the person on whom it is conferred constitutes an election by him to confirm the transfer, if he is aware of his duty to elect, and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he waives enquiry into the circumstances.

Such knowledge or waiver shall, in the absence of evidence to the contrary, be presumed if the person on whom the benefit has been conferred has enjoyed it for two years without doing any act to express dissent.

Such knowledge or waiver may be inferred from any act of his which renders it impossible to place the persons interested in the property professed to be transferred in the same condition as if such act had not been done.

Illustration.

A transfers to B an estate to which C is entitled, and, as part of the same transaction, gives C a coal-mine. C takes possession of the mine, and exhausts it. He has thereby confirmed the transfer of the estate to B.

If he does not, within one year after the date of the transfer, signify to the transferor or his representatives his intention to confirm or to dissent from the transfer, the transferor or his representatives may, upon the expiration of that period, require him to make his election; and, if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the transfer.

In case of disability, the election shall be postponed until the disability ceases, or until the election is made by some competent authority.

Apportionment.

36. In the absence of a contract or local usage to the contrary, all rents, annuities, pensions, dividends, and other periodical payments in the nature of income, shall, upon the transfer of the interest of the person

Apportionment of periodical payments on determination of interest of person entitled.

- Relevancy of oral admission as to contents of document, s. 22.
 previous conviction in criminal proceedings, s. 54
 statement as to fact of public nature contained in certain Acts
 or notifications, s. 37
 in maps, charts, and plans, s. 36
 of law of country contained in law-book, s. 38
 or act of conspirator, s. 10
 statements, s. 8.
- ' Relevant ' definition of, s. 3
- Relevant fact, existence of course of business when a, s. 16.
 facts. See *Relevancy of Facts*
 examination-in-chief and cross-examination of witness must
 relate to, s. 138
 proved Judge must decide upon, s. 165
 when evidence of, admissible, s. 5.
 facts not otherwise relevant, become, s. 11
 written or verbal statement of, by person dead, or who cannot
 be found, &c., when relevant, s. 32
- Religious foundation, relevancy of opinion as to constitution of, s. 49
- Repeal of rules and laws, s. 2.
- Reports of decisions, relevancy of, s. 38
 presumption as to genuineness of, s. 84
- Reputation, s. 3, ill. (e).
- Res Judicata*, s. 40
- Reversal of decision, improper admission or rejection of evidence, when no
 ground for, s. 167
- Right, relevancy of facts as to existence of, s. 13
 of opinions as to existence of general, s. 48.
- Rule of the road, Court must take judicial notice of, s. 57
- Rules of evidence repealed, s. 2.

S.

- Scandalous questions, when Court may forbid, s. 151
 not forbid, s. 151.
- Science, opinions of experts on point of, s. 45
- Seal, comparison of, with admitted or proved seal, s. 73
 presumption as to genuineness of, s. 82
- Seals of Courts, &c., of what seals Court must take judicial notice, s. 57.
- Second suit or trial, relevancy of judgments, &c., to bar, s. 40
- Secondary evidence, after notice to produce, s. 66
 certified copies, s. 63
 other copies, s. 63
 how far counterpart is, s. 63.
 meaning of, s. 63
 when admissible of existence, condition, or contents of
 document, s. 65.
- Series of similar occurrences, s. 15
 letters or papers, statement contained in document forming part of,
 s. 39.
- Servant of legal practitioner, communications to, s. 127.
 See *Attorney ; Barrister*.

existence of such circumstances, they shall, as between the transferee on the one part and the transferor and other persons (if any) affected by the transfer on the other part, be deemed to have existed, if the transferee, after using reasonable care to ascertain the existence of such circumstances, has acted in good faith.

Illustration.

A, a Hindu widow, whose husband has left collateral heirs, alleging that the property held by her as such is insufficient for her maintenance, agrees, for purposes neither religious nor charitable, to sell a field, part of such property, to B. B satisfies himself by reasonable enquiry that the income of the property is insufficient for A's maintenance, and that the sale of the field is necessary, and, acting in good faith, buys the field from A. As between B on the one part and A and the collateral heirs on the other part, a necessity for the sale shall be deemed to have existed.

39 Where a third person has a right to receive maintenance,

Transfer where third person or a provision for advancement or marriage, from the profits of immoveable property, and such property is transferred with the intention of defeating such right, the right may be enforced against the transferee if he has notice of such intention, or if the transfer is gratuitous; but not against a transferee for consideration and without notice of the right, nor against such property in his hands.

Illustration.

A, a Hindu, transfers Sultanpur to his sister-in-law B in lieu of her claim against him, for maintenance in virtue of his having become entitled to her deceased husband's property, and agrees with her that, if she is dispossessed of Sultanpur, A will transfer to her an equal area out of such of several other specified villages in his possession as she may elect. A sells the specified villages to C, who buys in good faith, without notice of the agreement. B is dispossessed of Sultanpur. She has no claim on the villages transferred to C.

40. Where, for the more beneficial enjoyment of his own

Burden of obligation imposing restriction on use of land, immovable property, a third person has, independently of any interest in the immovable property of another, or of any easement thereon, a right to restrain the enjoyment of the latter property, or to compel its enjoyment in a particular manner, or

where a third person is entitled to the benefit of an obligation arising out of contract, and annexed to the ownership of immovable property, but not amounting to an interest therein or easement thereon,

Statements, written or verbal, by several persons, and expresses feeling, &c., relevant to matter in question, s 32 (8).

Statutes repealed, s. 2 and schd

Subtracting from terms of written contract, &c, See *Exclusion of Evidence*.

Suit. See *Judgments, &c*

of what facts evidence admissible in, s 5

for damages, relevancy of facts in, s 12

T.

Technical expression, meaning of, evidence admissible to show, s. 98.

Telegraph messages, presumption as to, s 88.

Tenant See *Landlord and Tenant*

estoppel of, from denying landlord's title, s 116

Tender years, person of, when incompetent as witness, s 118.

Tenets of body of men or family, relevancy of opinions as to, s 49

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Territory, proof of cession of British, s 113

Threat, confession caused by, s 24

Time at which any fact in issue or relevant fact happened is fixing, s 9.

Title of Act, short, s 1.

foreign State, &c, when judicially noticed, s 57

landlord, estoppel of tenant from denying, s 116

Title deeds of witness not a party production of, s 130

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Transaction, facts forming parts of same, s. 6

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Translation of document produced by witness, s 162.

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Tribunals, Acts of, s 74.

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United Kingdom, proof of document required by law to be attested when executed in, and attesting witness cannot be found, s 69

Usages of body of men or family, relevancy of opinions as to, s. 42

V.

Vakil, certain questions asked by, without reasonable grounds, may be reported to High Court, s 150

Vakil communication made to, by or for client, when disclosable, s 126

not disclosable, s 126

waver of privilege, s 128

Varying terms of document, who may give evidence of contemporaneous agreement, s. 99.

Illustration.

A, a Hindu, who has separated from his father B, sells to C three fields, X, Y, and Z, representing that A is authorized to transfer the same. Of these fields, Z does not belong to A, it having been retained by B on the partition, but, on B's dying, A, as heir, obtains Z. C, not having rescinded the contract of sale, may require A to deliver Z to him

44. Where one of two or more co-owners of immoveable property, legally competent in that behalf, transfers his share of such property or any interest therein, the transferee acquires, as to such share or interest, and so far as is necessary to give effect to the transfer, the transferor's right to joint possession or other common or part-enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liabilities affecting, at the date of the transfer, the share or interest so transferred.

Where the transferee of a share of a dwelling-house belonging to an undivided family is not a member of the family, nothing in this section shall be deemed to entitle him to joint possession or other common or part-enjoyment of the house.

45. Where immoveable property is transferred for consideration to two or more persons, and such consideration is paid out of a fund belonging to them in common, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property identical, as nearly as may be, with the interests to which they were respectively entitled in the fund; and where such consideration is paid out of separate funds belonging to them respectively, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property in proportion to the shares of the consideration which they respectively advanced

In the absence of evidence as to the interests in the fund to which they were respectively entitled, or as to the shares which they respectively advanced, such persons shall be presumed to be equally interested in the property.

46. Where immoveable property is transferred for consideration by persons having distinct interests therein, the transferors are, in the absence of a contract to the contrary, entitled to share in the consideration equally where their interests in the property were of equal value, and, where such interests were of unequal value, proportionately to the value of their respective interests.

any person of whom he, in good faith, held such property, notwithstanding it may afterwards appear that the person to whom such payment or delivery was made had no right to receive such rents or profits.

Illustration.

A lets a field to B at a rent of Rs 50, and then transfers the field to C. B, having no notice of the transfer, in good faith pays the rent to A. B is not chargeable with the rent so paid

51. When the transferee of immoveable property makes any improvements made by *bona-fide* holders under defective titles. improvement on the property, believing in good faith that he is absolutely entitled thereto, and he is subsequently evicted therefrom by any person having a better title, the transferee has a right to require the person causing the eviction either to have the value of the improvement estimated and paid or secured to the transferee, or to sell his interest in the property to the transferee at the then market-value thereof, irrespective of the value of such improvement.

The amount to be paid or secured in respect of such improvement shall be the estimated value thereof at the time of the eviction.

When, under the circumstances aforesaid, the transferee has planted or sown on the property crops which are growing when he is evicted therefrom, he is entitled to such crops, and to free ingress and egress to gather and carry them.

52 During the active prosecution in any Court having authority in British India, or established beyond the limits of British India by the Governor-General in Council, of a contentious suit or proceeding in which any right to immoveable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding, so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court, and on such terms as it may impose.

53. Every transfer of immoveable property, made with intent to defraud prior or subsequent transferees thereof for consideration, or co-owners or other persons having an interest in such property, or to defeat or delay the creditors of the transferor, is voidable at the option of any person so defrauded, defeated, or delayed.

and although the death shall have been caused under such circumstances as amount in law to felony or other crime.

And it is enacted further that every such action or suit shall be for the benefit of the wife, husband, parent, and child, if any, of the person whose death shall have been so caused, and shall be brought by, and in the name of, the executor, administrator, or representative of the person deceased ;

and in every such action the Court may give such damages* as it may think proportioned to the loss resulting from such death to the parties respectively, for whom and for whose benefit such action shall be brought ; and the amount so recovered, after deducting all costs and expenses, including the costs not recovered from the defendant, shall be divided amongst the before-mentioned parties, or any of them, in such shares as the Court, by its judgment or decree, shall direct :

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts, namely —

- (1) Sindh (see *Gazette of India*, 1880, Pt I, p 672).
- (2) West Jalpaiguri (see *Gazette of India*, 1881, Pt I, p. 74) :
- (3) The District of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singhbhum (see *Gazette of India*, 1881, Pt. I, p 504)
- (4) The scheduled portion of the Mirzapur District (see *Gazette of India*, 1879, Pt. I, p 383) .
- (5) Jaunsar Bawar (see *Gazette of India*, 1879, Pt I, p 382).
- (6) The Scheduled Districts of the Punjab (see *Gazette of India*, 1881, Pt. I, p 483) .
- (7) The Scheduled Districts of the Central Provinces (see *Gazette of India*, 1879, Pt I, p. 771) :
- (8) The District of Sylhet (see *Gazette of India*, 1879, Pt. I, p. 631) :
- (9) The rest of Assam (except the North Lushai Hills) (see *Gazette of India*, 1897, Pt I, p. 299) :
- (10) The Porahat Estate in the Singhbhum District (see *Gazette of India*, 1897, Pt I, p 1059)

It has been extended, by notification under s. 5 of the last-mentioned Act, to the following Scheduled Districts, namely —

- (1) Kumaon and Garhwal (see *Gazette of India*, 1876, Pt I, p 606) :
- (2) The North-Western Provinces Tarai (see *Gazette of India*, 1876, Pt I, p 505)

* As to the measure of damages under this Act, see *Vinayak Raghunath v. G. I. P. Ry. Co.*, 7 Bom. O. C. J., 113. *Ratanbas v. G. I. P. Ry.*, 12. 120 ; s. c., on appeal, 8 ib. 130.

and have the rights, mentioned in the rules next following, or such of them as are applicable to the property sold :—

(1.) The seller is bound—

- (a) to disclose to the buyer any material defect in the property of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover ;
- (b) to produce to the buyer on his request for examination all documents of title relating to the property which are in the seller's possession or power ;
- (c) to answer to the best of his information all relevant questions put to him by the buyer in respect to the property or the title thereto ,
- (d) on payment or tender of the amount due in respect of the price, to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place ;
- (e) between the date of the contract of sale and the delivery of the property, to take as much care of the property and all documents of title relating thereto which are in his possession as an owner of ordinary prudence would take of such property and documents ;
- (f) to give, on being so required, the buyer or such person as he directs, such possession of the property as its nature admits ;
- (g) to pay, all public charges and rent accrued due in respect of the property up to the date of the sale, the interest on all incumbrances on such property due on such date, and, except where the property is sold subject to incumbrances, to discharge all incumbrances on the property then existing.

(2.) The seller shall be deemed to contract with the buyer that the interest which the seller professes to transfer to the buyer subsists, and that he has power to transfer the same .

Provided that, where the sale is made by a person in a fiduciary character, he shall be deemed to contract with the buyer that the seller has done no act whereby the property is incumbered, or whereby he is hindered from transferring it.

person as he directs, provided that, where the property is sold free from incumbrances, the buyer may retain, out of the purchase-money, the amount of any incumbrances on the property existing at the date of the sale, and shall pay the amount so retained to the persons entitled thereto;

- (c) where the ownership of the property has passed to the buyer, to bear any loss arising from the destruction, injury, or decrease in value of the property not caused by the seller;
 - (d) where the ownership of the property has passed to the buyer, as between himself and the seller, to pay all public charges and rent which may become payable in respect of the property, the principal moneys due on any incumbrances subject to which the property is sold, and the interest thereon afterwards accruing due.
- (6.) The buyer is entitled—
- (a) where the ownership of the property has passed to him, to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof;
 - (b) unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming under him, with notice of the payment to the extent of the seller's interest in the property, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery, and for interest on such amount; and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract, or to obtain a decree for its rescission.

An omission to make such disclosures as are mentioned in this section, paragraph 1, clause (a), and paragraph 5, clause (a), is fraudulent.

56. Where two properties are subject to a common charge,

Sale of one of two properties subject to a common charge. and one of the properties is sold, the buyer is, as against the seller, in the absence of a contract to the contrary,

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(d) An appeal shall lie from any declaration, order, or direction under this section as if the same were a decree.

(e) In this section "Court" means (1) a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction; (2) the Court of a District Judge within the local limits of whose jurisdiction the property or any part thereof is situate; (3) any other Court which the Local Government may, from time to time, by notification in the official Gazette, declare to be competent to exercise the jurisdiction conferred by this section.

CHAPTER IV.

OF MORTGAGES OF IMMOVEABLE PROPERTY AND CHARGES.

58. (a) A mortgage is the transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.

"Mortgage," "mortgagor," "mortgagee," "mortgage-money," and "mortgage-deed" defined.

The transferor is called a mortgagor, the transferee a mortgagee; the principal money and interest of which payment is secured for the time being are called the mortgage-money; and the instrument (if any) by which the transfer is effected is called a mortgage-deed.

(b) Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money, and agrees, expressly or impliedly, that, in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold, and the proceeds of sale to be applied, so far as may be necessary, in payment of the mortgage-money, the transaction is called a simple mortgage, and the mortgagee a simple mortgagee.

Simple mortgage.

Mortgage by conditional sale.

(c) Where the mortgagor ostensibly sells the mortgaged property—

on condition that, on default of payment of the mortgage-money on a certain date, the sale shall become absolute. or

SECTIONS

Miscellaneous.

- 25 Recovery of fines.
- 26. Provision as to offences punishable under two or more enactments
- 27 Meaning of service by post
- 28 Citation of enactments

SECTIONS

- 29 Saving for, previous enactments, rules, and bye-laws.

THE SCHEDULE.ENACTMENTS REPEALED

Rights and Liabilities of Mortgagor.

60. At any time after the principal money has become payable, the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage-money, to require the mortgagee (a) to deliver the mortgage-deed, if any, to the mortgagor; (b) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and (c), at the cost of the mortgagor, either to re-transfer the mortgaged property to him, or to such third person as he may direct, or to execute and (where the mortgage has been effected by a registered instrument) to have registered an acknowledgment in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished:

Provided that the right conferred by this section has not been extinguished by act of the parties, or by order of a Court.

The right conferred by this section is called a right to redeem, and a suit to enforce it is called a suit for redemption.

Nothing in this section shall be deemed to render invalid any provision to the effect that, if the time fixed for payment of the principal money has been allowed to pass, or no such time has been fixed, the mortgagee shall be entitled to reasonable notice before payment or tender of such money.

Nothing in this section shall entitle a person interested in a share only of the mortgaged property to redeem his own share only, on payment of a proportionate part of the amount remaining due on the mortgage, except where a mortgagee, or, if there are more mortgagees than one, all such mortgagees, has or have acquired, in whole or in part, the share of a mortgagor.

61. A mortgagor seeking to redeem any one mortgage shall, in the absence of a contract to the contrary, be entitled to do so without paying any money due under any separate mortgage made by him, or by any person through whom he claims, on property other than that comprised in the mortgage which he seeks to redeem.

Illustration.

A, the owner of farms Z and Y, mortgages Z to B for Rs. 1,000. A afterwards mortgages Y to B for Rs. 1,000, making no stipulation as to any additional charge on Z. A may institute a suit for the redemption of the mortgage on Z alone.

[C/ XLV. of
1860, ss. 32
and 33, and
Mad. Act I.
of 1891, s. 3
(36).]

- (2) "act," used with reference to an offence or a civil wrong, shall include a series of acts, and words which refer to acts done extend also to illegal omissions :

[I. of 1868,
s. (17).]

- (3) "affidavit" shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing :

[I. of 1868,
s. 2 (14).]

- (4) "barrister" shall mean a barrister of England or Ireland, or a member of the Faculty of Advocates in Scotland :

24 & 25 Vic.
c. 69, ss. 55 & 56
Vic., c. 14.

- (5) "Bengal Act" shall mean an Act made by the Lieutenant-Governor of Bengal in Council under the Indian Councils Acts, 1861 and 1892 :

- (6) "Bombay Act" shall mean an Act made by the Governor of Bombay in Council under the Indian Councils Acts, 1861 and 1892 :

24 & 25 Vic.,
c. 69, ss. 55 &
56 Vic.,
c. 14.
[52 & 55
Vic., c. 69,
s. 18 (4) ; C/
I. of 1868, s.
2 (8).]

- (7) "British India" shall mean all territories and places within Her Majesty's dominions which are for the time being governed by Her Majesty through the Governor-General of India or through any Governor or other officer subordinate to the Governor-General of India :

[52 & 53
Vic., c. 69,
s. 18 (2).]

- (8) "British possession" shall mean any part of Her Majesty's dominions, exclusive of the United Kingdom, and, where parts of those dominions

Implied contracts by mortgagor.

65. In the absence of a contract to the contrary, the mortgagor shall be deemed to contract with the mortgagee—

- (a) that the interest which the mortgagor professes to transfer to the mortgagee subsists, and that the mortgagor has power to transfer the same ;
- (b) that the mortgagor will defend, or, if the mortgagee be in possession of the mortgaged property, enable him to defend, the mortgagor's title thereto ;
- (c) that the mortgagor will, so long as the mortgagee is not in possession of the mortgaged property, pay all public charges accruing due in respect of the property ;
- (d) and, where the mortgaged property is a lease for a term of years, that the rent payable under the lease, the conditions contained therein, and the contracts binding on the lessee, have been paid, performed, and observed down to the commencement of the mortgage ; and that the mortgagor will, so long as the security exists, and the mortgagee is not in possession of the mortgaged property, pay the rent reserved by the lease or, if the lease be renewed, the renewed lease, perform the conditions contained therein, and observe the contracts binding on the lessee, and indemnify the mortgagee against all claims sustained by reason of the non-payment of the said rent or the non-performance or non-observance of the said conditions and contracts ;
- (e) and, where the mortgage is a second or subsequent incumbrance on the property, that the mortgagor will pay the interest from time to time accruing due on each prior incumbrance as and when it becomes due, and will, at the proper time, discharge the principal money due on such prior incumbrance.

Nothing in clause (c), or in clause (d), so far as it relates to the payment of future rent, applies in the case of a usufructuary mortgage.

The benefit of the contracts mentioned in this section shall be annexed to, and shall go with, the interest of the mortgagee as such, and may be enforced by every person in whom that interest is, for the whole or any part thereof, from time to time, vested.

[11. of 1863
s. 2 (12)]

- (15) "District Judge" shall mean the Judge of a principal Civil Court of original jurisdiction, but shall not include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction :

[11. of 1873,
s. 4]

- (16) "document" shall include any matter written, expressed, or described upon any substance by means of letters, figures, or marks, or by more than one of those means, which is intended to be used, or which may be used, for the purpose of recording that matter :

A writing which is not legal evidence of the matter expressed may yet be a document within the meaning of s. 29 of the I P. Code.—*Queen v. Shifast Ali*, 2 B. L. R. A. Cr., 12, 10 W. R., Cr., 61.

- (17) "enactment" shall include a Regulation (as hereinafter defined) and any Regulation of the Bengal, Madras, or Bombay Code, and shall also include any provision contained in any Act or in any such Regulation as aforesaid :

[Cr. I of
1868,
s. 2 (19)]

- (18) "father," in the case of any one whose personal law permits adoption, shall include an adoptive father :

[11. of 1897,
s. 2 (2)]

- (19) "financial year" shall mean the year commencing on the first day of April :

[45 & 46
Vic., c. 61,
s. 90; 56 &
57 Vic.,
c. 71,
s. 62.]

- (20) a thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not :

Right to sue for mortgage-money.

68. The mortgagee has a right to sue the mortgagor for the mortgage-money in the following cases only—

- (a) where the mortgagor binds himself to repay the same ;
- (b) where the mortgagee is deprived of the whole or part of his security by, or in consequence of, the wrongful act or default of the mortgagor ;
- (c) where, the mortgagee being entitled to possession of the property, the mortgagor fails to deliver the same to him, or to secure the possession thereof to him without disturbance by the mortgagor or any other person.

Where, by any cause other than the wrongful act or default of the mortgagor or mortgagee, the mortgaged property has been wholly or partially destroyed, or the security is rendered insufficient as defined in section 66, the mortgagee may require the mortgagor to give him, within a reasonable time, another sufficient security for his debt, and, if the mortgagor fails so to do, may sue him for the mortgage-money.

69. A power conferred by the mortgage-deed on the mortgagee, or on any person on his behalf, to sell or concur in selling, in default of payment of the mortgage-money, the mortgaged property or any part thereof, without the intervention of the Court, is valid in the following cases, "and in no others"* (namely)—

- (a) where the mortgage is an English mortgage, and neither the mortgagor nor the mortgagee is a Hindu, Muhammadan, or Buddhist, "or a member of any other race, sect, tribe, or class, from time to time specified in this behalf by the Local Government, with the previous sanction of the Governor-General in Council, in the local official Gazette ;"*
- (b) where the mortgagee is the Secretary of State for India in Council ;
- (c) where the mortgaged property or any part thereof is situate within the town of Calcutta, Madras, Bombay, Karachi, ' Rangoon, Moulmein, Bassein, or Akyab.'†

* The words quoted above in s 69, para. 1, and those in cl. (a), have been inserted by the Transfer of Property Act (1882) Amendment Act (III. of 1885), s. 5.

† In cl. (c) of s. 69, the words quoted have been substituted for the words, "or Rangoon," by Act VI. of 1904, s. 4.

A *jalur*, or right of fishery, as being a benefit arising out of land covered by water, is immoveable property.—*Ramgopal v. Noor Mohamed*, 1 L. R., 20 Cal. 446. See also 1 L. R., 3 Cal. 276 But see 1 L. R., 19 Cal. 544, F. B.; 1 L. R. 12 Bom., 221, and 1 L. R., 18 Cal. 80.

Right of ferry is immoveable property, 1 L. R., 13 Mad. 54 (1 L. R., 12 Bom. 221, 13 B. L. R. 265, referred to.)

The term "immoveable property" includes such incorporeal hereditaments as are connected with immoveable property, such as rights of common, rights of way, and other profits, such as rents, pensions, and annuities secured upon land, 1 L. R., 5 Bom. 322; 1 L. R., 6 Bom. 546.

A claim to an easement is one relating to an interest in land. 24 W. R. 300, 1 L. R., 20 Bom. 704.

Standing tree is immoveable property, 1 L. R., 16 Bom. 353, 24 W. R. 394, and 1 L. R., 20 Mad. 58, F. B.

A *hafi* is a benefit arising out of land, and is therefore immoveable property.—*Surendra Narain v. Bhai Lal*, 1 L. R., 22 Cal. 752.

The term property means an actual physical object, and does not include mere rights relating to physical objects. — *Matadin v. Kasim Hussain*, 1 L. R., 13 All. 432, F. B.

[1. of 1868,
s. 2 (15)]

(26) "imprisonment" shall mean imprisonment of either description as defined in the Indian Penal

XLV. of
1860.

Code:

A Sessions Judge should specify in his warrant whether the imprisonment awarded should be simple or rigorous, and if he omits to do so, simple imprisonment should be set forth in the warrant.—*Legal Remembrancer v. Radhoo Churn*, 18 W. R., Cr. 3.

With reference to this definition, the imprisonment is 488 of the Cr. P. Code of 1882 may be either simple or rigorous.—*Queen-Empress v. Narain*, 1 L. R., 9 All. 240.

[Cr. s. 2 & s. 3.
Vic. c. 69,
s. 18 (2).]

(27) "India" shall mean British India, together with any territories of any Native Prince or Chief under the suzerainty of Her Majesty exercised through the Governor-General of India or through any Governor or other officer subordinate to the Governor-General of India:

70. If, after the date of a mortgage, any accession is made to the mortgaged property, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to such accession.

Illustrations.

(a) A mortgages to B a certain field bordering on a river. The field is increased by alluvion. For the purposes of his security, B is entitled to the increase.

(b) A mortgages a certain plot of building land to B, and afterwards erects a house on the plot. For the purposes of his security, B is entitled to the house as well as the plot.

71. When the mortgaged property is a lease for a term of years, and the mortgagor obtains a renewal of the lease, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to the new lease.

72. When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property, he may spend such money as is necessary—

- (a) for the due management of the property and the collection of the rents and profits thereof ;
- (b) for its preservation from destruction, forfeiture, or sale ;
- (c) for supporting the mortgagor's title to the property ;
- (d) for making his own title thereto good against the mortgagor ; and,
- (e) when the mortgaged property is a renewable lease-hold, for the renewal of the lease ;

and may, in the absence of a contract to the contrary, add such money to the principal money at the rate of interest payable on the principal, and, where no such rate is fixed, at the rate of nine per cent. per annum.

Where the property is, by its nature, insurable, the mortgagee may also, in the absence of a contract to the contrary, insure and keep insured against loss or damage by fire the whole or any part of such property, and the premiums paid for any such insurance shall be a charge on the mortgaged property, in addition to the principal money, with the same priority and with interest at the

[1. of 1868,
s. 3 (4)]

(33) "month" shall mean a month reckoned according to the British calendar:
"Month."

See 23 W. R. 275, 2 C. L. R. 265, 1. L. R., 4 Cal 497, 3 C. L. R. 398, 1. L. R., 10 Cal. 913.

[1. of 1868,
s. 3 (6)]

(34) "moveable property" shall mean property of every description, except
"Moveable property" immovable property

The word property as used in the Transfer of Property Act (IV of 1882) means an actual physical object, and does not include mere rights relating to physical objects—*Matadin v. Kasim Hussain*, 1. L. R., 13 All. 432.

(35) "North-Western Provinces and Oudh Act" shall

"North-Western Provinces and Oudh Act." mean an Act made by the Lieutenant-Governor of the North-Western Provinces and Oudh in Council under the Indian Councils Acts, 1861 and 1892

24 & 25 Vic,
c. 67, s. 55 &
26 Vic,
c. 14.

[1. of 1868,
s. 2 (17)]

(36) "oath" shall include affirmation and declaration in the case of persons by
"Oath." law allowed to affirm or
declare instead of swearing

[1. of 1887,
s. 3 (9).]

(37) "offence" shall mean any act or omission made punishable by any law for the time being in force
"Offence"

[1. of 1887,
s. 3 (2)]

(38) "Part" shall mean a Part of the Act or Regulation in which the word
"Part."

[1. of 1868,
s. 2 (3).]

(39) "person" shall include any company or association or body of individuals, whether incorporated or not:
"Person."

- (b) he must use his best endeavours to collect the rents and profits thereof;
- (c) he must, in the absence of a contract to the contrary, out of the income of the property, pay the Government revenue, all other charges of a public nature accruing due in respect thereof during such possession, and any arrears of rent in default of payment of which the property may be summarily sold;
- (d) he must, in the absence of a contract to the contrary, make such necessary repairs of the property as he can pay for out of the rents and profits thereof after deducting from such rents and profits the payments mentioned in clause (c) and the interest on the principal money;
- (e) he must not commit any act which is destructive or permanently injurious to the property;
- (f) where he has insured the whole or any part of the property against loss or damage by fire, he must, in case of such loss or damage, apply any money which he actually receives under the policy, or so much thereof as may be necessary, in reinstating the property, or, if the mortgagor so directs, in reduction or discharge of the mortgage-money;
- (g) he must keep clear, full, and accurate accounts of all sums received and spent by him as mortgagee, and, at any time during the continuance of the mortgage, give the mortgagor, at his request and cost, true copies of such accounts and of the vouchers by which they are supported;
- (h) his receipts from the mortgaged property, or, where such property is personally occupied by him, a fair occupation-rent in respect thereof, shall, after deducting the expenses mentioned in clauses (c) and (d) and interest thereon, be debited against him in reduction of the amount (if any) from time to time due to him on account of interest on the mortgage-money, and, so far as such receipts exceed any interest due, in reduction or discharge of the mortgage-money; the surplus (if any) shall be paid to the mortgagor;

13 Vic., c. 3.

(46) "Regulation" shall mean a Regulation made under the Government of India Act, 1870 :
 "Regulation."

(47) "rule" shall mean a rule made in exercise of a power conferred by any enactment, and shall include a regulation made as a rule under any enactment :
 "Rule."

[L. of 1887,
n. 3 (2).]

(48) "schedule" shall mean a schedule to the Act or Regulation in which the word occurs :
 "Schedule."

[*vide* XIV.
of 1874, n. 1,
para. 3.]
XIV. of 1874.

(49) "Scheduled District" shall mean a "Scheduled District" as defined in the Scheduled Districts Act, 1874 :
 "Scheduled District."

[L. of 1868, n.
3 (15).]

(50) "section" shall mean a section of the Act or Regulation in which the word occurs :
 "Section."

[L. of 1887, n.
3 (7).]

(51) "ship" shall include every description of vessel used in navigation not exclusively propelled by oars :
 "Ship."

[L. of 1887,
n. 3 (12).]

(52) "sign," with its grammatical variations and cognate expressions, shall, with reference to a person who is unable to write his name, include "mark," with its grammatical variations and cognate expressions :

The word "sign" includes initials, L. L. R. 8 All. 293. But see L. L. R., 23 Cal. 896, in which it has been held that the word "sign" does not include initial.

date of the second mortgage, the balance due to B & Co. does not exceed Rs 5,000 B & Co subsequently advance to A sums making the balance of the account against him exceed the sum of Rs. 10,000 B & Co. are entitled, to the extent of Rs 10 000, to priority over C.

80. No mortgagee paying off a prior mortgage, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his original security. And, except in the case provided for by section 79, no mortgagee making a subsequent advance to the mortgagor, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his security for such subsequent advance.

Marshalling and Contribution.

81. If the owner of two properties mortgages them both to one person, and then mortgages one of the properties to another person who has not notice of the former mortgage, the second mortgagee is, in the absence of a contract to the contrary, entitled to have the debt of the first mortgagee satisfied out of the property not mortgaged to the second mortgagee, so far as such property will extend, but not so as to prejudice the rights of the first mortgagee, or of any other person having acquired for valuable consideration an interest in either property.

82. Where several properties, whether of one or several owners, are mortgaged to secure one debt, such properties are, in the absence of a contract to the contrary, liable to contribute rateably to the debt secured by the mortgage, after deducting from the value of each property the amount of any other incumbrance to which it is subject at the date of the mortgage.

Where, of two properties belonging to the same owner, one is mortgaged to secure one debt, and then both are mortgaged to secure another debt, and the former debt is paid out of the former property, each property is, in the absence of a contract to the contrary, liable to contribute rateably to the latter debt after deducting the amount of the former debt from the value of the property out of which it has been paid.

Nothing in this section applies to a property liable under section 81 to the claim of the second mortgagee.

"High Court," "immoveable property," "imprisonment," "Local Government," "Magistrate," "month," "moveable property," "oath," "person," "section," "son," "swear," "will," and year," apply also, unless there is anything repugnant in the subject or context, to all Acts of the Governor-General in Council made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

1877, 1 of
1887]

(2) The definitions in the said section of the following words and expressions, that is to say, "abet," "chapter," "commencement," "financial year," "local authority," "master," "offence," "Part," "public nuisance," "registered," "schedule," "ship," "sign," "sub-section," and "writing," apply also, unless there is anything repugnant in the subject or context, to all Acts of the Governor-General in Council and Regulations made on or after the fourteenth day of January, 1887.

General Rules of Construction.

[Cy. Bo Act
111 of 1886,
10]

5. (1) Where any Act of the Governor-General in Council is not expressed to come into operation on a particular day, then it shall come into operation on the day on which it receives the assent of the Governor-General.

24 & 25
Vic. c. 67

(2) Where any Act of the Governor-General in Council is reserved under the Indian Councils Act, 1861, section 20, for the signification of Her Majesty's pleasure thereon, then, if no later date is expressed, it shall come into operation, if assented to by Her Majesty, on the day on which the assent of Her Majesty is duly proclaimed.

[62 & 53
Vic. c. 63,
s. 36 (2).]

(3) Unless the contrary is expressed, an Act of the Governor-General in Council or Regulation shall be construed as coming into operation immediately on the expiration of the day preceding its commencement.

- (a) Any person (other than the mortgagee of the interest sought to be redeemed) having any interest in, or charge upon, the property ;
- (b) any person having any interest in, or charge upon, the right to redeem the property ;
- (c) any surety for the payment of the mortgage-debt or any part thereof ;
- (d) the guardian of the property of a minor mortgagor on behalf of such minor ;
- (e) the committee or other legal curator of a lunatic or idiot mortgagor on behalf of such lunatic or idiot ;
- (f) the judgment-creditor of the mortgagor, when he has obtained execution by attachment of the mortgagor's interest in the property ;
- (g) a creditor of the mortgagor who has, in a suit for the administration of his estate, obtained a decree for sale of the mortgaged property.

92. to 94.—[*Repealed by Act V. of 1908.*]

95. Where one of several mortgagors redeems the mort-
Charge of one of several gaged property, and obtains possession
 co-mortgagors who redeems. thereof, he has a charge on the share of
 each of the other co-mortgagors in the property for his proportion
 of the expenses properly incurred in so redeeming and obtaining
 possession.

96, 97.—[*Repealed by Act V. of 1908.*]

Anomalous Mortgages.

98. In the case of a mortgage, not being a simple mortgage,
Mortgage not described in a mortgage by conditional sale, usufruc-
 section 58, clauses (b), (c), tuary mortgage, or an English mort-
 (d), and (e), gage, or a combination of the first and
 third, or the second and third, of such forms, the rights and
 liabilities of the parties shall be determined by their contract as
 evidenced in the mortgage-deed, and, so far as such contract does
 not extend, by local usage.

99.—[*Repealed by Act V. of 1908.*]

Pending proceedings—Effect of repeal—*Held per Mitter, J.*, that the appeal, having been filed before Act XII. of 1879 was passed, was a proceeding within the meaning of s. 6 of Act I. of 1868, and that the new Act therefore did not affect the appeal.—*Ramgobind v. Denobundhu*, 9 C. L. R. 281 (I. L. R., 2 Bom. 148, distinguished)

The word "any proceedings commenced" in s. 6 of Act I. of 1868 include an appeal against a decree made before the passing of the repealing Act, as such appeal must be considered a proceeding in the original suit—*Hurro Sundari v. Brajohari Das*, I. L. R. 13 Cal 86 Referred to in I. L. R., 14 Cal. 636, I. L. R., 16 Cal 267, F. B. Approved in I. L. R., 15 Cal. 107. Explained and distinguished in I. L. R., 16 Cal. 431.

Effect of repeal.—*Held*, notwithstanding the provisions of s. 6, Act I. of 1868, and the attachment of lands before the coming into operation of Act XXII. of 1882, that the order for sale, having been made subsequently, was illegal, and should be set aside—*Shivram v. Khondiya*, I. L. R. 8 Bom 340 Referred to in I. L. R., 14 Bom 521, and in I. L. R., 16 Cal. 267, F. B. See also I. L. R., 24 Cal 399.

The Limitation Act of 1871 came into operation from 1st of July 1871 with respect to appeals and applications, and was not controlled by s. 6 of Act I of 1868.—*Gobind v. Narayan*, 11 B. H. C. R. 111 and 116, note

Held that a judgment-debtor, imprisoned in satisfaction of the decree against him under Act VIII. of 1859, was not entitled, under Act X of 1877, to be released on the coming into operation of the latter Act, if he had been imprisoned for more than six months, but less than two years.—*In re Ratansi Kahanji*, I. L. R., 2 Bom. 148, F. B. Referred to in I. L. R., 2 All. 82, I. L. R., 5 Bom 659, I. L. R., 6 Bom. 30, I. L. R., 8 Bom. 521, I. L. R., 11 Bom 472, I. L. R., 12 Bom. 453, I. L. R., 14 Bom 520, and in I. L. R., 16 Cal 267, F. B. Followed in I. L. R., 1 All. 668, and I. L. R., 9 Cal. 446.

Proceedings in execution were commenced when Act VIII. of 1859 was in force, but the property of the judgment-debtor was sold in pursuance of those proceedings, after Act X. of 1877 came into operation. Subsequently the Court made an order setting aside the sale *Held* that this order was governed by the former Code, and was therefore not appealable.—*Chinto Ghaski v. Krishnaji Narayan*, I. L. R., 3 Bom. 214. See also *Durga Prasad v. Ram Charan*, I. L. R., 2 All 785. Referred to in I. L. R., 8 Bom. 294, I. L. R., 12 Bom. 453, and in I. L. R., 16 Cal. 267. See, however, *Harbans Sahai v. Bhairu Purshad*, I. L. R., 5 Cal. 259, 4 C. L. R. 23.

deposit in such Court as last aforesaid the amount sought to be tendered, and such deposit shall have the effect of a tender of such amount.

103. Where, under the provisions of this Chapter, a notice is to be served on or by, or a tender or deposit made or accepted or taken out of Court by, any person incompetent to contract,* such notice may be served, or tender or deposit made, accepted, or taken, by the legal curator of the property of such person; but, where there is no such curator, and it is requisite or desirable, in the interests of such person, that a notice should be served, or a tender or deposit made, under the provisions of this Chapter, application may be made to any Court in which a suit might be brought for the redemption of the mortgage to appoint a guardian *ad litem* for the purpose of serving or receiving service of such notice, or making or accepting such tender, or making or taking out of Court such deposit, and for the performance of all consequential acts which could or ought to be done by such person if he were competent to contract; and the provisions of Chapter XXXI. of the Code of Civil Procedure† shall so far as may be, apply to such application, and to the parties thereto, and to the guardian appointed thereunder.

104. The High Court may, from time to time, make rules consistent with this Act for carrying out, in itself and in the Court of Civil Judicature subject to its superintendence, the provisions contained in this Chapter.

CHAPTER V.

OF LEASES OF IMMOVEABLE PROPERTY.

105. A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service, or any other thing of value, to be rendered,

“Lease” defined

* As to persons competent to contract, see ss 11 and 12 of the Indian Contract Act (IX of 1872)

† This reference to Ch. XXXI of the Civil Procedure Code (Act X. of 1877) should now be read as applying to Ch. XXXI. of the Civil Procedure Code (Act XIV. of 1882).—See s. 3 of the latter Act.

By s 6 of Act I of 1868, a suit is to be governed by the Registration Law in force at the time of the institution, and not by that which may be in force when it comes on for hearing—*Ugra Singh v. Ablakt Koor*, I. L. R., 4 Cal. 536, 3 C. L. R. 464. Referred to in I. L. R., 2 All 851, I. L. R., 4 All 229, I. L. R., 6 Bom. 190, I. L. R., 13 Bom. 232, and in I. L. R., 7 Cal 570.

Repeal of Registration Act (VIII. of 1871) by Act III. of 1877. Under the provisions of s 6 of Act I of 1868, proceedings must be governed by the Act in force at the time when they are instituted—*Mohomed Hossein v. Hader Abdullah*, I. L. R., 3 Cal 727. Referred to in I. L. R., 16 Cal. 267, F. B. See also I. L. R., 24 Cal. 399.

The word "proceedings" in s. 6 of Act I of 1868 as applied to a suit means the suit as an entirety, that is, down to the final decree. A second appeal, therefore, on a question of the amount due as rent will not lie when the suit was instituted previous to the passing of Act VIII. of 1885, although the judgment was delivered and the first appeal heard subsequently to the passing of that Act—*Satghur v. Mujdan*, I. L. R., 15 Cal 107 (I. L. R., 13 Cal 86 approved).

Act I of 1868, s 6—Retrospective enactment when applicable to pending suits Section 21 (2) of the Bengal Tenancy Act (VIII of 1885) is expressly retrospective, and applies to suits pending at the date of the commencement of the Act—*Tapsee Singh v. Ram Saran*, I. L. R., 15 Cal 376. See also *Jogeesur v. Asiani*, I. L. R., 14 Cal 553.

The provision of an Act which creates a new right cannot, in the absence of express legislation or direct implication, have retrospective effect. Held accordingly that a judgment-debtor's right under s 174 of the Bengal Tenancy Act to set aside a sale did not avail where the sale was held in pursuance of a decree, the execution whereof had been applied for before that Act came into operation.—*Lal Mohun v. Jogendra Chunder*, I. L. R., 14 Cal 636, F. B. Applied in I. L. R., 15 Cal 383, and in I. L. R., 21 Cal 940, F. B. All these three cases have been overruled by I. L. R., 22 Cal 767. See also I. L. R., 18 Mad 477.

Where a suit is brought after the date of the Transfer of Property Act (IV. of 1882) for the foreclosure of a mortgage dated previous to the Act, the procedure to be followed is that given by the Transfer of Property Act—*Bhobo Sundari v. Rakhal Chunder*, I. L. R., 12 Cal. 583 (*Ganga Sahai v. Kishen Sahai*, I. L. R., 6 All. 262, approved). See also I. L. R., 13 All 432, I. L. R., 11 Cal. 58, and I. L. R., 13 Mad 502. But see I. L. R., 12 Cal. 436.

In a suit for foreclosure brought after the passing of the Transfer of Property Act (IV. of 1882) where notice was served while

class of such leases, may be made by unregistered instrument or by oral agreement without delivery of possession.”*

108. In the absence of a contract or local usage to the contrary, the lessor and the lessee of immovable property, as against one another respectively, possess the rights and are subject to the liabilities mentioned in the rules next following or such of them as are applicable to the property leased :—

A.—Rights and Liabilities of the Lessor.

(a) The lessor is bound to disclose to the lessee any material defect in the property, with reference to its intended use, or of which the former is, and the latter is not, aware, and which the latter could not with ordinary care discover :

(b) the lessor is bound, on the lessee’s request, to put him in possession of the property :

(c) the lessor shall be deemed to contract with the lessee that, if the latter pays the rent reserved by the lease, and performs the contracts binding on the lessee, he may hold the property during the time limited by the lease without interruption.

The benefit of such contract shall be annexed to, and go with, the lessee’s interest as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

B.—Rights and Liabilities of the Lessee.

(d) If, during the continuance of the lease, any accession is made to the property, such accession (subject to the law relating to alluvion for the time being in force) shall be deemed to be comprised in the lease :

(e) if, by fire, tempest, or flood, or violence of an army or of a mob, or other irresistible force, any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, the lease shall, at the option of the lessee, be void :

* In s. 107, the two concluding paragraphs quoted have been substituted for the original second paragraph thereof by Act VI. of 1904, s. 5.

[Cf. s. 3 & 43
Vic. c. 6,
s. 38 (r).]

8. (1) Where this Act, or any Act of the Governor-General in Council or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

[1. of 1868,
s. 3 (2) and
s. 5 (3).]

9. (1) In any Act of the Governor-General in Council or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from," and, for the purpose of including the last in a series of days or any other period of time, to use the word "to."

Minority of plaintiff—General Clauses Act (I of 1868), s. 3, cl. 2.—S. 19 of the Limitation Act gives a new period of limitation, not an extension of the old period; and the plaintiff being a minor at the date from which the new period was to be reckoned fell within the wording of s. 7 of the Limitation Act.—*Venkataramayyar v. Kothandaramayyar*, I. L. R., 13 Mad. 135.

(2) This section applies also to all Acts of the Governor-General in Council made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

Mad. Act I.
of 1891, s.
11; Cf. I. of
1887, s. 7 (r),
and s. 7 (2).]

10. (1) Where, by any Act of the Governor-General in Council or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open:

(*m*) the lessee is bound to keep, and, on the termination of the lease, to restore, the property in as good condition as it was in at the time when he was put in possession, subject only to the changes caused by reasonable wear and tear or irresistible force, and to allow the lessor and his agents, at all reasonable times during the term, to enter upon the property, and inspect the condition thereof, and give or leave notice of any defect in such condition; and when such defect has been caused by any act or default on the part of the lessee, his servants, or agents, he is bound to make it good within three months after such notice has been given or left:

(*n*) if the lessee becomes aware of any proceeding to recover the property or any part thereof, or of any encroachment made upon, or any interference with the lessor's rights concerning such property, he is bound to give, with reasonable diligence, notice thereof to the lessor:

(*o*) the lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were his own; but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell timber, pull down or damage buildings, work mines or quarries not open when the lease was granted, or commit any other act which is destructive or permanently injurious thereto

(*p*) he must not, without the lessor's consent, erect on the property any permanent structure except for agricultural purposes:

(*q*) on the determination of the lease, the lessee is bound to put the lessor into possession of the property.

109. If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights, and, if the lessee so elects, be subject to all the liabilities of the lessor as to the property or part transferred so long as he is the owner of it; but the lessor shall not, by reason only of such transfer, cease to be subject to any of the liabilities imposed upon him by the lease unless the lessee elects to treat the transferee as the person liable to him:

Provided that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee, not having reason to believe that such transfer has been made, pays rent to the lessor, the lessee shall not be liable to pay such rent over again to the transferee.

Powers and Functionaries.[1. of 1887,
s. 5.]

14. (1) Where, by any Act of the Governor-General in Council or Regulation made after the commencement of this Act, any power is conferred on the Government, then that power may be exercised from time to time as occasion requires.

(2) This section applies also to all Acts of the Governor-General in Council and Regulations made on or after the fourteenth day of January, 1887.

15. Where, by any Act of the Governor-General in Council or Regulation, a power to appoint any person to fill any office or execute any function is conferred, then, unless it is otherwise expressly provided, any such appointment, if it is made after the commencement of this Act, may be made either by name or by virtue of office.

16. Where, by any Act of the Governor-General in Council or Regulation, a power to make any appointment is conferred, then, unless a different intention appears, the authority having power to make the appointment shall also have power to suspend or dismiss any person appointed by it in exercise of that power.

[1. of 1888,
s. 3 (6).]

17. (1) In any Act of the Governor-General in Council or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of indicating the application of a law to every person or number of persons for the time being executing the functions of an office, to mention the official title of the officer at present executing the functions, or that of the officer by whom the functions are commonly executed.

(2) This section applies also to all Acts of the Governor-General in Council made after the third day of January,

a third person, or by claiming title in himself; and in either case the lessor or his transferee does some act showing his intention to determine the lease :

(*n*) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.

Illustrations to Clause (n).

A lessee accepts from his lessor a new lease of the property leased, to take effect during the continuance of the existing lease. This is an implied surrender of the former lease, and such lease determines thereupon.

112. A forfeiture under section 111, clause (g), is waived by acceptance of rent which has become due since the forfeiture, or by distress for such rent, or by any other act on the part of the lessor showing an intention to treat the lease as subsisting :

Waiver of forfeiture.

Provided that the lessor is aware that the forfeiture has been incurred :

Provided also that, where rent is accepted after the institution of a suit to eject the lessee on the ground of forfeiture, such acceptance is not a waiver.

113. A notice given under section 111, clause (d), is waived, with the express or implied consent of the person to whom it is given, by any act on the part of the person giving it, showing an intention to treat the lease as subsisting.

Waiver of notice to quit.

Illustrations.

(a.) A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires. B renders, and A accepts, rent which has become due in respect of the property since the expiration of the notice. The notice is waived.

(b.) A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires, and B remains in possession. A gives to B as lessee a second notice to quit. The first notice is waived.

114. Where a lease of immoveable property has determined by forfeiture for non-payment of rent, and the lessor sues to eject the lessee, if, at the hearing of the suit, the lessee pays or renders to the lessor the rent in arrear, together with interest thereon and his full costs

Relief against forfeiture for non-payment of rent.

[Cf. Mad.
Act I. of
1891, s. 15.]

21. Where, by any Act of the Governor-General in Council or Regulation, a power to make orders, rules, or bye-laws, is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary, or rescind any orders, rules, or bye-laws so made.

[I. of 1887,
s. 4]

22. Where, by any Act of the Governor-General in Council or Regulation which is not to come into force immediately on the passing thereof, a power is conferred to make rules or bye-laws, or to issue orders with respect to the application of the Act or Regulation, or with respect to the establishment of any Court or office, or the appointment of any Judge or officer thereunder, or with respect to the person by whom, or the time when, or the place where, or the manner in which, or the fees for which, anything is to be done under the Act or Regulation, then that power may be exercised at any time after the passing of the Act or Regulation; but rules, bye-laws, or orders so made or issued, shall not take effect till the commencement of the Act or Regulation.

[I. of 1887,
s. 6]

23. Where, by any Act of the Governor-General in Council or Regulation, a power to make rules or bye-laws is expressed to be given subject to the condition of the rules or bye-laws being made after previous publication, then the following provisions shall apply, namely:—

- (1) the authority having power to make the rules or bye-laws shall, before making them, publish a draft of the proposed rules or bye-laws for the information of persons likely to be affected thereby:

any of such leases "together with, or subject to, those of the local law (if any) for the time being in force.

Such notification shall not take effect until the expiry of six months from the date of its publication.

CHAPTER VI.

OF EXCHANGES.

118. When two persons mutually transfer the ownership of one thing for the ownership of another; neither thing or both things being money only, the transaction is called an "exchange."

"Exchange" defined.

A transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale.

119. In the absence of a contract to the contrary, the party Right of party deprived of deprived of the thing or part thereof he thing received in exchange. has received in exchange, by reason of any defect in the title of the other party, is entitled, at his option, to compensation, or to the return of the thing transferred by him.

120. Save as otherwise provided in this chapter, each party Rights and liabilities of has the rights, and is subject to the liabilities, of a seller as to that which he gives, and has the rights, and is subject to the liabilities of a buyer as to that which he takes.

Exchange of money.

121. On an exchange of money, each party thereby warrants the genuineness of the money given by him.

CHAPTER VII.

OF GIFTS.

122. "Gift" is the transfer of certain existing moveable or immovable property made voluntarily and without consideration, by one person

"Gift" defined.

* The words in the first paragraph of s. 117 have been inserted by Act VI. of 1904, s. 6.

Miscellaneous.

[Cf. 1 of
1865, s. 4.]
XLV. of
1860.
X. of 1863.

25. Sections 63 to 70 of the Indian Penal Code and the provisions of the Code of Criminal Procedure for the time being in force in relation to the issue and the execution of warrants for the levy of fines shall apply to all fines imposed under any Act, Regulation, rule, or bye-law, unless the Act, Regulation, rule, or bye-law, contains an express provision to the contrary.

This section does not authorize a Cantonment Magistrate to award rigorous imprisonment, in default of payment of fine, under Madras Act I. of 1868—*Empress v Goundadu*, I. L. R., 8 Mad 350.

The Income Tax Act of 1869 having been passed subsequently to the General Clauses Act of 1868, imprisonment in default of payment of fine was authorized by s. 5 of the latter Act.—*Reg. v Sangapa Bin*, 7 B. H. C. R., Cr., 76.

[1. of 1887,
s. 6.]

26. Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.

[Cf. 52 & 53
Vic. c. 63,
s. 26.]

27. Where any Act of the Governor-General in Council or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying, and posting, by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

(ii) A effects a policy on his own life with an Insurance Company, and assigns it to a Bank for securing the payment of an existing or future debt. If A dies, the Bank is entitled to receive the amount of the policy, and to sue on it without the concurrence of A's executor, subject to the proviso in sub-section (1) of section 130, and to the provisions of section 132.

131. Every notice of transfer of an actionable claim shall be in writing, signed by the transferor or his agent duly authorized in this behalf, or, in case the transferor refuses to sign, by the transferee or his agent, and shall state the name and address of the transferee.

132. The transferee of an actionable claim shall take it subject to all the liabilities and equities actionable claim. to which the transferor was subject in respect thereof at the date of the transfer.

Illustrations

(1) A transfers to C a debt due to him by B, A being then indebted to B. C sues B for the debt due by B to A. In such suit B is entitled to set off the debt due by A to him, although C was unaware of it at the date of such transfer.

(2.) A executed a bond in favour of B under circumstances entitling the former to have it delivered up and cancelled. B assigns the bond to C for value and without notice of such circumstances. C cannot enforce the bond against A.

133. Where the transferor of a debt warrants the solvency of the debtor, the warranty, in the absence of a contract to the contrary, applies only to his solvency at the time of the transfer, and is limited, where the transfer is made for consideration, to the amount or value of such consideration.

134. Where a debt is transferred for the purpose of securing an existing or future debt, the debt so transferred, if received by the transferor, or recovered by the transferee, is applicable, first, in payment of the costs of such recovery; secondly, in or towards satisfaction of the amount for the time being secured by the transfer; and the residue, if any, belongs to the transferor or other person entitled to receive the same.

135. Every assignee, by endorsement or other writing, of a policy of marine insurance, or of a policy of insurance against fire, in whom the property in the subject insured shall be assigned, shall be deemed to have assigned the property in the subject insured.

THE SCHEDULE.

ENACTMENTS REPEALED.

(See section 2.)

Year.	No.	Title or subject.	Extent of repeal.
1868	I.	The General Clauses Act, 1868.	The whole.
1872	I.	The Indian Evi- dence Act, 1872.	So much as re- lates to Act I. of 1868.
1887	I.	The General Clauses Act, 1887.	The whole.
1891	XII.	The Repealing and Amending Act, 1891.	So much as re- lates to Act I. of 1868.

THE SCHEDULE—(continued).

(b.) ACTS OF THE GOVERNOR-GENERAL IN COUNCIL.

Number and year.	Subject.	Extent of repeal.
IX of 1842 ...	Lease and Re-lease	The whole.
XXXI. of 1854 ...	Modes of conveying land.	Section 17.
XI. of 1855 ...	Mesne-profits and Improvements.	Section 1; in the Title, the words, "to mesne-profits, and;" and in the Preamble, "to limit the liability for mesne-profits, and"
XXVII. of 1866 ...	Indian Trustees Act.	Section 31.
IV of 1872 ...	Punjab Laws Act.	So far as it relates to Bengal Regulations I. of 1798 and XVII. of 1806.
XX. of 1875 ...	Central Provinces Laws Act	So far as it relates to Bengal Regulations I of 1798 and XVII. of 1806.
XVIII. of 1876 ...	Oudh Laws Act.	So far as it relates to Bengal Regulation XVII. of 1806.
I. of 1877 ...	Specific Relief Act.	In sections 35 and 36, the words "in writing"

(c.) REGULATIONS.

Number and year.	Subject.	Extent of repeal.
Bengal Regulation I. of 1798.	Conditional Sales.	The whole Regulation.
Bengal Regulation XVII. of 1806.	Redemption ...	The whole Regulation.
Bombay Regulation V. of 1827.	Acknowledgment of Debts: Interest: Mortgagees in Possession.	Section 15.

Extracts from Notes on Clauses published with the Bill.

"Clause 3.—This clause brings together and defines sixty-two words and phrases of more or less frequent occurrence in the Indian Statute-book. The arrangement is in alphabetical order, and, in accordance with that order, as also with a view to obviating the risk of oversight, the definitions of "father" and "son" and of the cognate expressions "affidavit," "oath" and "swear" have been separated and inserted each in its proper place.

Clause 3 (7).—The definition of British India is, as mentioned in the Statement of Objects and Reasons above, taken from the Interpretation Act, 1889 [52 & 53 Vict., c. 63, s. 18 (1)].

Clause 3 (17).—The definition of "enactment" suggested by this clause is intended to remove certain doubts which have from time to time been raised as to the meaning of the word.

Clause 3 (20).—It will be observed that this definition differs materially from that contained in the Indian Penal Code, but it is believed that it is a better, being a more equitable and reasonable, definition of the expression "good faith." It is now well established in England, for, as Lord Denman, C.J., remarked as far back as in 1836 in *Goodman against Harry* (1 A. & E., at page 876), "gross negligence may be evidence of malafides, but is not the same thing. We have shaken off the last remnant of the contrary doctrine." (See also *Jones v. Gordon*, L. R., 2 App. Cas. 629, and *Derry v. Peck*, L. R. 14 App. Cas. 337). Where it is intended to afford protection only in the case of a person who acts in good faith and without negligence, it seems better to say so in terms.

Clause 3 (21).—Experience has suggested the desirability of providing a definition of the expression "Government." The present practice is to refer specifically to the "Governor-General in Council" when the Government of India only is meant and to the "Local Government" when a subordinate Administration alone is in view, but it is frequently useful to refer in general terms to "the Government," as, for example, in legislation affecting public property, and the question has more than once arisen whether such phraseology includes the Local Government concerned as well as the Supreme Govern-

Governor-General's assent was given to the General Clauses Act, 1887, section 10 of which should here be referred to). Paragraph 2, on the other hand, declares that the definitions in clause 3 which are at present contained in the General Clauses Act (I. of 1887), apply also to all Acts of the Governor-General in Council and Regulations made after the date of the coming into force of that enactment. Any alterations which have been made in the existing definitions have been referred to in the preceding notes, and the fact that the substance is in no case affected has, it is believed, been satisfactorily explained. Similar declaratory provisions have, where necessary, been added to the other clauses of the Bill.

Clause 5.—The first and second paragraphs are declaratory of the practice based upon the provisions of the existing law on the subject, while the origin of paragraph (3) is to be found in section 36 (2) of the Interpretation Act, 1889 (52 & 53 Vict., c. 63).

~ 5. Clauses 6 (1) and 8.—These are borrowed from the English Act just referred to, and their utility in the direction of abbreviating the phraseology used in enactments scarcely requires demonstration. The second paragraph of clause 6 is an addition which has been suggested to meet the case of temporary Ordinances made and promulgated under section 23 of the Indian Councils Act, 1861 (24 and 25 Vict., c. 67) and of enactments, such as the Upper Burma Criminal Justice Regulation (VII. of 1886), which are expressly limited to endure only for a specified period. It seems clear that the effect of the expiry of a law should be the same as that of its repeal and no more.

Clause 13.—The provisions of this clause take the form of "definitions" in the General Clauses Act (I. of 1868), but they would seem to be more appropriately enacted as rules of construction.

Clause 15.—The practice hitherto observed in drafting in this country appears to have been to state explicitly in each Act that a person may be appointed "by name or by virtue of his office," if the admissibility of making *ex-officio* appointments is contemplated. This may lead to the inference that no person can be appointed by office unless express authority to that effect is conferred by the law under which the appointment is made. It will, from an administrative point of view,

THE INDIAN TREASURE-TROVE ACT, 1878

(Act VI. of 1878).*

RECEIVED THE G.G.'s ASSENT ON THE 13TH FEBRUARY 1878.

An Act to amend the Law relating to Treasure-trove.

WHEREAS it is expedient to amend the law relating to treasure-trove; It is hereby enacted as follows:—

Preliminary.

Short title; 1. This Act may be called "The Indian Treasure-trove Act, 1878;"

Extent; It extends to the whole of British
India :

Commencement. And it shall come into force at once.

2. [*Repeal of enactments.*] Repealed by the Repealing and Amending Act (XII. of 1891).

* For the Statement of Objects and Reasons, see *Gazette of India*, 1877, Pt V, p. 1463; for Discussions in Council, see *ibid*, Supplement, pp. 1288 and 1326, *ibid*, 1878, pp 207 and 287

Act VI. of 1878 has been declared in force in—

Angul and the Khondmals, by the Angul District Regulation (I. of 1894), s 3,

the Santhal Parganas by the Santhal Parganas Settlement Regulation (III. of 1872), s. 3, as amended by the Santhal Parganas Laws Regulation (III. of 1886), s. 3;

Upper Burma generally (except the Shan States), by the Upper Burma Laws Act (XX. of 1836), s. 6.

It has also been declared, by notification under s. 3 (a) of the Scheduled Districts Act (XIV of 1874), to be in force in the following portions of the de-regulationized Scheduled Districts of the Chutia Nagpur Division, namely :—

the Districts of Hazaribagh, Lohardaga, and Manbhum and Pargana Dhalbhum, and the Kolnan in the District of Singhbhum (see *Gazette of India*, 1881, Pt I, p. 504). The District of Lohardaga included at this time the present District of Palamau, which was separated in 1894.

Acts passed after the 3rd January 1868, and to Regulations made on or after the 14th January 1887, while that contained in clause 26 ought to be confined to enactments passed on or after the last-mentioned date, but there seems to be no danger in recognizing them as of universal application."

a certain place (*mentioning it*), and requiring all persons claiming the treasure or any part thereof to appear, personally or by agent, before the Collector on a day and at a place therein mentioned, such day not being earlier than four months or later than six months after the date of the publication of such notification :

(b) When the place in which the treasure appears to the Collector to have been found was, at the date of the finding, in the possession of some person other than the finder, the Collector shall also serve on such person a special notice in writing to the same effect.

6. Any person having any right to such treasure or any part thereof as owner of the place in which it was found or otherwise, and not appearing as required by the notification issued under section 5, shall forfeit such right.

7. On the day notified under section 5, the Collector shall cause the treasure to be produced before him, and shall enquire as to, and determine,—

(a) the person by whom, the place in which, and the circumstances under which, such treasure was found; and,

(b) as far as is possible, the person by whom, and the circumstances under which, such treasure was hidden.

8. If, upon an enquiry made under section 7, the Collector sees reason to believe that the treasure was hidden, within one hundred years before the date of the finding, by a person appearing as required by the said notification, and claiming such treasure, or by some other person under whom such person claims, the Collector shall make an order adjourning the hearing of the case for such period as he deems sufficient to allow of a suit being instituted in the Civil Court by the claimant to establish his right.

When treasure may be declared ownerless.

9. If, upon such enquiry, the Collector sees no reason to believe that the treasure was so hidden, or

if, where a period is fixed under section 8, no suit is instituted as aforesaid within such period to the knowledge of the Collector, or

On 29th December 1886, after the Bengal Tenancy Act of 1885 came into operation, the decree-holder applied for execution, and the tenure in respect of which the decree for arrears of rent had been made, was attached. Notice to stay the sale of the tenure by depositing the decretal amount was served upon the applicant in the present case by the decree-holder but this circumstance has, in our opinion, no bearing upon the question which arises in the case. The tenure was put up for sale, and the applicant then preferred a claim objecting to the execution proceeding, which was numbered as a claim case, No 22 of 1887, under s. 63 of Bengal Act VIII of 1869.

By the order of the 18th June 1887, which it is now sought to set aside, the Munsiff rejected the claim without enquiring into it, on the ground that, under the provisions of s 170 of the Bengal Tenancy Act, no such claim could be preferred.

This order was made upon the authority of a decision of this Court of the 27th May 1886, in Rule No 798 of 1886. That decision is not reported. The terms of it are as follows —

"Execution of the decree for arrears of rent obtained by the petitioner was taken out on the 6th of January last. The proceedings, therefore, in our opinion, would be regulated by the Bengal Tenancy Act of 1885. The tenure of the debtor was attached and advertised for sale. A claim was made by a third party to have two-thirds of this tenure exempted from sale as having been purchased by him. The Munsiff found that the claimant had purchased one-third, and accordingly exempted that one-third share from sale. An objection has been raised under s. 170 of the Bengal Tenancy Act to the effect that the Munsiff acted without jurisdiction. That section provides that the sections of the Code of Civil Procedure, under which such an order could be passed, shall not apply to a tenure or holding attached in execution of a decree for arrears due thereon. Under such circumstances we set aside the Munsiff's order as without jurisdiction. We make the rule absolute with costs."

We are unable to concur with the above decision. We are of opinion that, under s 6 of Act I. of 1868, the provisions of the Bengal Tenancy Act do not apply to this case.

The decree in the present case was made before the Bengal Tenancy Act came into force. But it appears to us that this circumstance would not affect the question whether the provisions of the Act applied, inasmuch as the suit was instituted before the Act came into operation. In our opinion, "proceedings" in the 6th section of Act I. of 1868 include all proceedings from the institution of the suit to the final step taken in execution of decree.

(a) allot to either party the whole or more than his share of such treasure, on such party paying to the Collector for the other party such sum of money as the Collector may fix as the equivalent of the share of such other party, or of the excess so allotted, as the case may be; or

(b) sell such treasure or any portion thereof by public auction, and divide the sale-proceeds between the parties according to the rule hereinbefore prescribed :

Provided also that, when the Collector has, by his declaration under section 9, rejected any claim made under this Act by any person other than the said finder or person claiming as owner of the place in which the treasure was found, such division shall not be made until after the expiration of two months without an appeal having been presented under section 9 by the person whose claim has been so rejected, or, when an appeal has been so presented, after such appeal has been dismissed.

When the Collector has made a division under this section, he and shares to be delivered shall deliver to the parties the portions to parties. of such treasure, or the money in lieu thereof, to which they are respectively entitled under such division.

13. When a declaration has been made as aforesaid in respect of any treasure, and two or more persons have appeared as aforesaid, and each of them claimed as owner of the place where such treasure was found, or the right of any person who has so appeared and claimed is disputed by the finder of such treasure, the Collector shall retain such treasure, and shall make an order staying his proceedings with a view to the matter being enquired into and determined by a Civil Court.

14. Any person who has so appeared and claimed may, within one month from the date of such Settlement of such dispute, order, institute a suit in the Civil Court to obtain a decree declaring his right: and in every such suit the finder of the treasure and all persons disputing such claim before the Collector shall be made defendants.

15. If any such suit is instituted, and the plaintiff's claim is finally established therein, the Collector and division thereupon. shall, subject to the provisions of section 12, divide the treasure between him and the finder.

The case of *Ratanchand Shrichand v Hanmantrao Shivabakas* (1) lays down that any "proceedings" includes all proceeding in any suit from its institution to its "final" disposal, and I take its execution proceedings fall within the term "final disposal" I rely on *Thakur Prasad v Ahsan Ali* (1); *Mahomed Hossin v. Hadji Abdulah* (2), and *In re Ratansi Kalsanj* (3), *Hurrosundari Dabi v Bhojohari Das Manji* (4), *Satghori v. Mujdan* (5)

[WILSON, J]—The case of *In re Ratansi Kalsanj* is not of much use to you in the present case, but you may take it that all the judges who decided it on the construction of the General Clauses Act took the same view that has been taken by this Court]

Baboo Rashi Behari Ghose for the opposite parties

It is suggested by the other side that because the decree was outstanding there is a pending proceeding within the meaning of s 6 of the General Clauses Act, and also that "proceedings" is identical with "suit" The distinction for which I contend, however, is pointed out in *Jugmohun Mahto v Luchmeshur Singh* (6) where it is said that "although an application for execution is an application in the suit resulting in decree, it may not be an application in a pending proceeding, the suit having matured into a decree it could not properly be said to be pending thereafter"

If the application had been pending thus, the old procedure could have been used, but not so is no step had been taken in execution The definition of the word "decree" in the Civil Procedure Code shows that there is a distinction between "suit" and "decree" Section 3 of the Code shows a distinction between proceedings before and after decree Section 25 of the Code does not sanction transfer of "execution proceedings," but of "suits" Under s 64 it has been held that execution proceedings are not proceedings in a suit.

[WILSON, J]—There is no use in citing one Act for the purpose of construing another]

The case of *Gurupadapa Basapa v Virbhadrappa Iraangapa* (7) is especially in point, and upholds my contention as to pending proceedings, and *Shivram Udaram v Kondiba Muktaji* (8) carries

(1) I L R, 1 All. 668 (671).

(2) I L R., 3 Cal. 727.

(3) I L R., 2 Bom. 148.

(4) I L R, 13 Cal. 86

(5) I L R, 15 Cal. 107.

(6) I L R, 10 Cal. 748

(7) I L R., 7 Bom. 459 (463).

(8) I. L. R., 8 Bom. 340.

ACT XXVII. OF 1866

(The Indian Trustee Act, 1866).*

RECEIVED THE G-G.'S ASSENT ON THE 24TH OCTOBER 1866.

An Act to consolidate and amend the Law relating to the Conveyance and Transfer of Property in British India vested in Mortgagees and Trustees in cases to which English Law is applicable.

WHEREAS it is expedient to consolidate and amend the laws relating to the conveyance and transfer of moveable and immoveable property in British India vested in mortgagees and trustees in cases to which English law is applicable; It is hereby enacted as follows:—

1. [*Repeal of Act*] *Repealed by the Repealing Act (XIV. of 1870).*

Interpretation-clause.

2 In this Act, unless there be something repugnant in the subject or context,—

“immoveable property” shall extend to and include messuages, tenements, and hereditaments, “Immoveable property.” corporeal and incorporeal, of every tenure or description, whatever may be the estate or interest therein;

“stock” shall mean any fund, annuity, or security transferable in books kept by any company or society established or to be established, “Stock.”

* The Statement of Objects and Reasons for the Bill which was passed into law as Act XXVII. of 1866 is not published For Discussions on the Bill, see *Gazette of India*, 1866, Supplement, pp. 416, 417, 494, and 531

This Act (XXVII of 1866) has been declared, by notification under s. 3 (a) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts: The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singhbhum —See *Gazette of India*, 1881, Pt. I, p 504

This Act is mainly founded on “the Trustee Act, 1853” (Stat. 13 & 14 Vict, c 60), and “the Trustee Act, 1852” (Stat. 15 & 16 Vict, c 55).

Act XXVII., 1866.—1.

given to an enactment so as to affect substantive rights but that provisions affecting mere procedure are applied to pending proceedings. To this class belong such cases as *Framji Bomanji v Hosmasji Barjorji* (1), *Lal Mohun Mukerjee v. Jogendra Chundra Roy* (2), *Usir Ali v. Ramkomal Shaha* (3).

The second class of cases comprises those in which the enactment to be construed provides its own rule of construction by expressly or impliedly declaring that it is or is not to have retrospective operation, or the extent to which it is to affect pending proceedings. To this class belong *Mungul Pershad Dicht v. Griya Kant Lahari* (4), in which the Privy Council construed the Limitation Act, 1871; *Tufse Singh v. Ram Sarun Korri* (5), in which a Full Bench of this Court placed a construction upon s. 21 of the Bengal Tenancy Act, and several cases which will be considered later, in which the Courts have construed s. 3 coupled with other sections of the Civil Procedure Code.

The third class of cases consists of those in which the law is changed by a mere repeal of a previously existing law, and the repealing enactment contains no special rule for its own interpretation. Such cases are governed by s. 6 of the General Clauses Act.

The case now before us belongs to the third class, and, for the purpose of deciding it, we have to construe the words in s. 6, which say that the repeal of a Statute "shall not effect any proceedings commenced" before the repeal takes effect.

The word "proceedings" is a very general one, it is not limited to proceedings connected with civil suits, but includes, I suppose, proceedings other than civil proceedings and civil proceedings other than suits. When applied to suits, it may be used to mean the suit as a whole, or it may be used, and often is used, to express the separate steps taken in the course of a suit the aggregate of which makes up the suit.

I propose first to consider the decisions affecting the question before us, and, in doing so, I shall have to notice some which did not depend upon the construction of the General Clauses Act, but which have a more or less close bearing upon the question before us.

In *Mungul Pershad Dicht v. Griya Kant Lahari* (6) the question was whether an application for execution was governed, in

(1) 3 Bom. H. C., O. C., 40

(2) 1. L. R., 14 Cal. 636

(3) 1. L. R., 16 Cal. 383

(4) 1. L. R., 8 Cal. 51.

(5) 1. L. R., 15 Cal. 376.

(6) 1. L. R., 8 Cal. 51.

of the Punjab "*and the Chief Court of Lower Burma*,"* or such one or more Judges of the said Courts respectively as shall be appointed by the Chief Justice or the senior Judge,† as the case may be, to entertain applications, and make orders, under this Act;

"trust" shall not mean the duties incident to an estate conveyed by way of mortgage; but, with

"Trust," "trustee." this exception, the words "trust" and

"trustee" shall extend to and include implied and constructive trusts, and shall extend to and include cases where the trustee has some beneficial estate or interest in the subject of the trust, and shall extend to and include the duties incident to the office of executor or administrator of a deceased person;

"lunatic" shall mean any person who shall have been found by due course of law to be of unsound

"Lunatic." mind and incapable of managing his affairs;

"person of unsound mind" shall mean any person not a minor, who, not having been found to

"Person of unsound mind." be a lunatic, shall be incapable, from infirmity of mind, to manage his own affairs;

In the case of a will made or an intestacy occurring before the first day of January 1866,‡ "heir"

"Heir" and "devisee." shall mean the person claiming an interest in the immoveable property of a deceased person under the laws concerning descent applicable to such property; and "devisee" shall, in addition to its ordinary signification, mean the heir of a devisee and the devisee of an heir, and generally any person claiming an interest in the immoveable property of a deceased person, not as heir of such deceased person, but by a title dependent solely upon the operation of the laws concerning devise and descent:

In the case of a will made or an intestacy occurring on or after the first day of January 1886,‡ "heir" shall mean any person claiming an interest in the immoveable property of a deceased person under the rules for the distribution of an intestate's estate;

* The Italics have been inserted by Act VI of 1900, s 47 and Sch. I.

† As to the Punjab, see "the Punjab Courts Act" (XVIII of 1884),

s 5.

‡ The day on which "the Indian Succession Act" (X. of 1865) came into force.

25 Vict, cap. 104. That section runs "From and after the abolition of the Courts abolished as aforesaid in any of the said Presidencies, the High Court of the same Presidency shall have jurisdiction over all proceedings pending in such abolished Courts at the time of the abolition thereof, and such proceedings, and all previous proceedings in the said last mentioned Courts, shall be dealt with as if the same had been had in the said High Court, save that any such proceedings may be continued as nearly as circumstances permit under and according to the practice of the abolished Courts respectively." This provision so far as it keeps alive the practice of the abolished Courts in pending cases, is exactly analogous in character to the enactment that we have to construe, and the expression "pending proceedings" cannot, I think, be distinguished in meaning from "proceedings commenced."

The matter came before the Court, consisting of Peacock C J, and Morgan and Phear, JJ, in this way. Three persons had been arrested in execution under writs issued from the High Court similar in form to the writs of *Ca Sa.* in use in the Supreme Court, and they were brought up by *habeas corpus* and claimed to be discharged on the ground that their detention was illegal. It turned out according to the view that ultimately prevailed that the legality of the custody of each man depended upon whether the procedure in force in the Supreme Court or that of the High Court was to be followed. It is only necessary to notice the case of one of the prisoners—Shumbhochunder Holder. With regard to him, all the Judges agreed, though not without some doubt on the part of Phear, J, that his case was governed by the old law, on the ground that the decree against him had been obtained and execution proceedings instituted against him in the Supreme Court before its abolition, and that the proceedings then before the Court were under the circumstances a continuation of those earlier execution proceedings. A series of cases have arisen upon the Limitation Act, 1877. In *Behary Lall v Gobarbhun Lall* (1), Mitter and Norris, JJ, dealing with the effect of that Act upon the execution of decrees passed before it came into operation, held that, by reason of s. 6 of the General Clauses Act, the provisions of the previous law remained unaffected. In *Gurupadapa Basappa v Virbhadrappa Irsangappa* (2) the plaintiff obtained a decree before the Limitation Act of 1887 was passed. After the passing of that Act, he made an application, which, under the former law, would have had the effect of keeping the decree in force for the purpose of execution, but which, under the latter Act, had not that effect. It was held that

(1) I. L. R., 9 Cal 446.

(2) I. L. R., 7 Bom. 645.

effect as if the trustee or mortgagee had been sane, and had duly executed a deed so releasing or disposing of the contingent right.

6. When any lunatic or person of unsound mind shall be

High Court may transfer stock or Government securities of lunatic trustees and mortgagees.

solely entitled to any stock or Government securities, or to anything in action, upon any trust, or by way of mortgage, it shall be lawful for the High Court to

make an order vesting in any person or persons the right to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, or to sue for and recover such thing in action, or any interest in respect thereof ;

and when any person or persons shall be entitled jointly with any lunatic or person of unsound mind to any stock or Government securities, or thing in action, upon any trust or by way of mortgage, it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, or to sue for and recover such thing in action, or any interest in respect thereof, either in such person or persons so jointly entitled as aforesaid, or in such last-mentioned person or persons together with any other person or persons the said High Court may appoint.

7. When any stock or Government securities shall be standing

Power to transfer stock or Government securities of deceased persons.

in the name of any deceased person whose executor or administrator is a lunatic or person of unsound mind, or

when anything in action shall be vested in any lunatic or person of unsound mind as the executor or administrator of a deceased person, it shall be lawful for the High Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, or to sue for and recover such thing in action, or any interest in respect thereof, in any person or persons the said Court may appoint.

8. Whenever any minor* shall hold any immoveable property

High Court may convey estates of minor trustees and mortgagees.

upon any trust or by way of mortgage, it shall be lawful for the High Court to make an order vesting such property

in such person or persons in such manner, and for such estate, as the said Court shall direct ; and the order shall have the same

* For definition of minor, see "the Indian Majority Act" (IX. of 1875).

execution, an application by the attaching creditor for sale of the property is a new proceeding. Perhaps however, this case ought rather to be regarded as having been decided on the other grounds pointed out in the judgment.

The third group consists of cases decided with respect to the Civil Procedure Code, and almost all of them were expressly decided, not upon the General Clauses Act, but upon that Act together with and modified by the special rules of construction laid down in the Civil Procedure Code. The first of these is *In re Ratansi Kallanj* (1), before Westropp, C. J., and four other Judges. The point decided was that a judgment-debtor imprisoned in execution under the Civil Procedure Code of 1859, and who had been in prison for six months, was not entitled to be released on the passing of the Code of 1877, which reduced the period of imprisonment for debt to six months. The decision turns upon the construction of the Procedure Code itself, which contained rules of construction different from those of the General Clauses Act, and I do not find that any of the learned Judges expressed an opinion as to what the effect of the General Clauses Act upon the case would have been if the special rules of the Procedure Code had not been present to control it, except Green, J., who cites *Ratanchand Shrichand v. Hanmantrao Shrivakas* (2) and is disposed to regard proceedings as applying to suits 'including execution and appeal.'

In *Chinto Yashu v. Krisnay Narayan* (3) an application made after the repeal of the Procedure Code of 1859 to set aside a sale made in execution proceedings commenced under that Act was held to be governed by the repealed Act. The question whether execution is a part of the same proceedings as the suit within the meaning of s. 6 of the General Clauses Act, did not arise; and if I rightly follow the judgment of West, J., he intentionally guarded himself against expressing an opinion upon any question of so general a character, but he suggested a test when he said that the proceeding before the Court was "so intimately connected with the proceedings in execution that it ought properly to be regarded as a part of those proceedings." In suggesting that test, I think it is only reasonable to suppose that the learned Judge had in view, not merely the General Clauses Act, but the General Clauses Act modified by s. 3 and other sections of the Procedure Code, in the manner which had been explained in *In re Ratansi Kallanj* (1).

In *Runjit Singh v. Meherban Koor* (4) the question for consideration related to cases in which, under the Procedure Code of

(1) 1 L. R., 2 Bom. 148.

(2) 6 Bom. H. C., A. C., 166.

(3) 1 L. R., 3 Bom. 214.

(4) 1 L. R., 3 Cal. 653.

as if the trustee had duly executed a conveyance so releasing or disposing of the contingent right.

13. When any person jointly entitled with any other person or

High Court may make order where persons jointly entitled with others out of jurisdiction to contingent right in immoveable property.

persons to a contingent right in any immoveable property upon any trust shall be out of the jurisdiction of the High Court, or cannot be found, it shall be lawful for the said Court to make an

order disposing of the contingent right of the person out of the jurisdiction, or who cannot be found, to the person or persons so jointly entitled as aforesaid, or to such last-mentioned person or persons together with any other person or persons; and the order shall have the same effect as if the trustee out of the jurisdiction, or who cannot be found, had duly executed a conveyance so releasing or disposing of the contingent right.

14. Where there shall have been two or more persons jointly

When uncertain which of several trustees survived.

holding any immoveable property upon any trust, and it shall be uncertain which of such trustees was the survivor, it shall be lawful for the High Court to make an order vesting such property in such person or persons, in such manner, and for such estate, as the said Court shall direct; and the order shall have the same effect as if the survivor of such trustees had duly executed a conveyance of the property in the same manner for the same estate.

15. Where any one or more person or persons shall have

When uncertain whether last trustee living or dead.

held any immoveable property upon any trust, and it shall not be known, as to the trustee last known to have held such property, whether he be living or dead, it shall be lawful for the High Court to make an order vesting such property in such person or persons in such manner, and for such estate, as the said Court shall direct; and the order shall have the same effect as if the last trustee had duly executed a conveyance of the property in the same manner for the same estate

16. When any person holding any immoveable property

When trustee dies without heir.

upon any trust shall have died intestate as to such property without an heir, or shall have died, and it shall not be known who is his heir or devisee, it shall be lawful for the High Court to make an order vesting such property in such person or persons, in such manner, and for such estate, as the said Court shall direct; and the order shall

place of the original decree-holder. On the 26th July J applied in the Small Cause Court for execution of the decree, and on the same date the decree was transferred for execution to the District Court of Bankura. On the 3rd August a writ of attachment issued, and on the 5th it was served. Sale proclamation issued on the 11th and was served on the 14th August, and on the 20th September the sale took place. On the 27th September 1894, the judgment-debtor applied, under s 310A of the Code of Civil Procedure, which section became part of the Code under the provisions of Act V of 1894, passed on the 2nd March 1894, to have the sale set aside. The District Judge, relying upon the case of *Girish Chunder Basu v. Apurva Krishna Dass* (I L R, 21 Cal 940), together with the principle enunciated in the cases of *Lal Mohun Mukerji v. Jogendra Chunder Roy* (I L R, 14 Cal. 636) and *Usir Ali v. Ram Komal Shaha* (I L R, 15 Cal 383) refused to set it aside, on the ground that s 310A was not a mere matter of procedure, and Act V. of 1894 had no retrospective effect, and therefore s. 310A was not applicable to proceedings in execution of a decree which had been passed before that section came into operation. In an application under s 622 of the Civil Procedure Code to set aside this decision as wrong *Held* by the Full Court that the decision in *Lal Mohun Mookerji v. Jogendra Chunder Roy* (I L R, 14 Cal. 636), so far as it holds that s. 174 of the Bengal Tenancy Act creates a new right in a judgment debtor, and is therefore inapplicable to a case in which the decree was passed before that Act became law, is wrong. The cases of *Usir Ali v. Ram Komal Shaha* (I L R., 15 Cal 383) and *Girish Chunder Basu v. Apurva Krishna Dass* (I. L R., 21 Cal 940) which are based upon the same principle, are also wrongly decided.

Quære—Whether the decision in *Lal Mohun Mookerji v. Jogendra Chunder Roy* (I L R, 14 Cal 636) was correct under s 6 of the General Clauses Act by reason of the execution proceedings having been commenced under Bengal Act VIII. of 1867, an Act repealed by the Bengal Tenancy Act? That question did not arise in the present case, for though the execution proceedings were instituted under the old law the case is unaffected by s. 6 of the General Clauses Act, as the change in the law was brought about, not by the repeal of the old Act, but by the addition to it of a new section, 310 A.

Held, therefore, that s 310 A was applicable to the proceedings in execution in the present case, and in that view the Court below was bound, upon the application of the judgment-debtor, to set aside the sale, and not having done so, it had failed to exercise jurisdiction within the meaning of s 622 of the Code. The Court had power therefore to interfere under that section.

ACT VIII. OF 1890.
The Guardians and Wards Act, 1890.

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ACT VIII. OF 1890.*

The Guardians and Wards Act, 1890.

RECEIVED THE G.-G.'S ASSENT ON THE 21ST MARCH 1890.

*An Act to consolidate and amend the Law relating to
Guardian and Ward.*

WHEREAS it is expedient to consolidate and amend the law relating to guardian and ward; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Title, extent, and commencement. 1. (1) This Act may be called the Guardians and Wards Act, 1890.

(2) It extends to the whole of British India, inclusive of British Baluchistan; and

(3) It shall come into force on the first day of July 1890.

* For Statement of Objects and Reasons, see *Gazette of India*, 1886, Pt. V., p. 77; for report of the Select Committee, see *ibid.*, 1890, Pt. V., p. 77, and for Debates in Council, see *ibid.*, 1886, Supplement, pp. 419 and 666, and *ibid.*, 1890, Pt. VI., pp. 33 and 45.

The Act has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act (XIII of 1898).

The Act has been declared in force in the Santhal Parganas by notification under s. 3 of the Santhal Parganas Settlement Regulation (III. of 1872) as amended by Regulation (III. of 1899), s. 3; and in Angul and the Khondmals by Reg. (I. of 1894), s. 3.

It has been declared not to be in force in the Scheduled Districts in Ganjam and Vizagapatam, by notification under s. 3 (b) of the Scheduled Districts Act (XIV. of 1874).—See *Gazette of India*, 1898, Pt. I, p. 872.

† The words, "Upper Burma and," have been omitted here, having been repealed by the Fifth Schedule to the Burma Laws Act (XIII. of 1898).

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of 1890.

2 (1) On and from that day the enactments mentioned in the schedule shall be repealed to the extent specified in the third column thereof.

Repeal.

(2) But all proceedings had, certificates granted, allowances assigned, obligations imposed, and applications, appointments, orders, and rules made under any of those enactments, shall, so far as may be, be deemed to have been respectively had, granted, assigned, imposed, and made under this Act; and

(3) Any enactment or document referring to any of those enactments shall, so far as may be, be construed to refer to this Act, or to the corresponding portion thereof.

3. This Act shall be read subject to every enactment heretofore or hereafter passed relating to any Court of Wards by the Governor-General in Council, or by a Governor or Lieutenant-Governor in Council; and nothing in this Act shall be construed to affect, or in any way derogate from, the jurisdiction or authority of any Court of Wards, or to take away any power possessed by any High Court established under the Statute 24 and 25 Victoria, chapter 104 (*An Act for establishing High Courts of Judicature in India*).*

Definitions.

4. In this Act, unless there is something repugnant in the subject or context,—

(1) “minor” means a person who, under the provisions of the Indian Majority Act, 1875,† is to be deemed not to have attained his majority:

(2) “guardian” means a person having the care of the person of a minor or of his property, or of both his person and property:

* The Indian High Courts Act, 1861.

† Act IX. of 1875.

(3) "ward" means a minor for whose person or property, or both, there is a guardian :

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V.
of

(4) "District Court" has the meaning assigned to that expression in the Code of Civil Procedure,* and includes a High Court in the exercise of its ordinary original civil jurisdiction :

(5) "the Court" means the District Court having jurisdiction to entertain an application under this Act for an order appointing or declaring a person to be a guardian ; and, where a guardian has been appointed or declared in pursuance of any such application, it means the Court which appointed or declared the guardian, or, in any matter relating to the person of the wards the District Court having jurisdiction in the place where the ward for the time being ordinarily resides :

(6) "Collector" means the chief officer in charge of the revenue-administration of a district,† and includes any officer whom the Local Government, by notification in the official Gazette, may, by name or in virtue of his office, appoint to be a Collector in any local area, or, with respect to any class of persons, for all or any of the purposes of this Act :

(7) "European British subject" means an European British subject as defined in the Code of Criminal Procedure, 1898,‡ and includes any Christian of European descent . and

(8) "Prescribed" means prescribed by rules made by the High Court under this Act.

* Act XIV of 1882

† For appointments of Collectors under this sub-section in—

(1) the Presidency of Bombay, see the Bombay List of Local Rules and Orders, Vol I., Ed 1896, p cxlii. ;

(2) the North Western Provinces and Oudh, see the N - W. P and Oudh List of Local Rules and Orders, Ed 1894, p 148

‡ See s. 3 (1) of the new Code of Criminal Procedure (Act V. of 1898), according to which the original reference to the Code of 1882 has been altered to that of 1898.

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of 1890.

CHAPTER II.

APPOINTMENT AND DECLARATION OF GUARDIANS.

5. (1) Where a minor is an European British subject, a guardian or guardians of his person or property, or both, may be appointed, by will or other instrument to take effect on the death of the person appointing,—

Power of parents to appoint in case of European British subjects.

(a) by the father of the minor, or,

(b) if the father is dead or incapable of acting, by the mother.

(2) Where guardians have been appointed under subsection (1) by both parents, they shall act jointly.

6. In the case of a minor who is not an European British subject, nothing in this Act shall be construed to take away or derogate from any power to appoint a guardian of his person or property or both, which is valid by the law to which the minor is subject.

Power of the Court to make order as to guardianship.

7. (1) Where the Court is satisfied that it is for the welfare of a minor that an order should be made—

(a) appointing a guardian of his person or property or both, or

(b) declaring a person to be such a guardian, the Court may make an order accordingly.

(2) An order under this section shall imply the removal of any guardian who has not been appointed by will or other instrument, or appointed or declared by the Court.

(3) Where a guardian has been appointed by will or other instrument or appointed or declared by the Court, an order under this section appointing or declaring another person to be guardian in his stead shall not be made until the powers of the guardian appointed or declared as aforesaid have ceased under the provisions of this Act.

Persons entitled to apply for order.

8. An order shall not be made under the last foregoing section except on the application of—

- (a) the person desirous of being, or claiming to be, the guardian of the minor, or
- (b) any relative or friend of the minor, or
- (c) the Collector of the district or other local area within which the minor ordinarily resides, or in which he has property, or
- (d) the Collector having authority with respect to the class to which the minor belongs.

9. (1) If the application is with respect to the guardianship of the person of the minor, it shall be made to the District Court having jurisdiction in the place where the minor ordinarily resides.

(2) If the application is with respect to the guardianship of the property of the minor, it may be made either to the District Court having jurisdiction in the place where the minor ordinarily resides, or to a District Court having jurisdiction in a place where he has property.

(3) If an application with respect to the guardianship of the property of a minor is made to a District Court other than that having jurisdiction in the place where the minor ordinarily resides, the Court may return the application, if, in its opinion, the application would be disposed of more justly or conveniently by any other District Court having jurisdiction.

10. (1) If the application is not made by the Collector, it shall be by petition signed and verified in manner prescribed by the Code of Civil Procedure* for the signing and verification of a plaint, and stating, so far as can be ascertained,—

* Act XIV. of 1882.

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- (a) the name, sex, religion, date of birth, and ordinary residence of the minor ;
 - (b) where the minor is a female, whether she is married, and, if so, the name and age of her husband ;
 - (c) the nature, situation, and approximate value of the property, if any, of the minor ;
 - (d) the name and residence of the person having the custody or possession of the person or property of the minor ;
 - (e) what near relations the minor has, and where they reside ;
 - (f) whether a guardian of the person or property or both of the minor has been appointed by any person entitled, or claiming to be entitled, by the law, to which the minor is subject, to make such an appointment,
 - (g) whether an application has, at any time, been made to the Court, or to any other Court with respect to the guardianship of the person or property or both of the minor, and, if so, when, to that Court, and with what result ;
 - (h) whether the application is for the appointment or declaration of a guardian of the person of the minor, or of his property, or of both ,
 - (i) where the application is to appoint a guardian, the qualifications of the proposed guardian ,
 - (j) where the application is to declare a person to be a guardian, the grounds on which that person claims ;
 - (k) the causes which have led to the making of the application ; and
 - (l) such other particulars, if any, as may be prescribed, or as the nature of the application renders it necessary to state.
- (e) If the application is made by the Collector, it shall be by letter addressed to the Court, and forwarded by post,

or in such other manner as may be found convenient, and shall state, as far as possible, the particulars mentioned in sub-section (1). Act
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(3) The application must be accompanied by a declaration of the willingness of the proposed guardian to act, and the declaration must be signed by him, and attested by at least two witnesses.

11. (1) If the Court is satisfied that there is ground for proceeding on the application, it shall fix a day for the hearing thereof, and cause notice of the application, and of the date fixed for the hearing,—

(a) to be served in the manner directed in the Code of Civil Procedure* on—

- (i) the parents of the minor if they are residing in British India,
- (ii) the person, if any, named in the petition or letter as having the custody or possession of the person or property of the minor,
- (iii) the person proposed in the application or letter to be appointed or declared guardian, unless that person is himself the applicant, and
- (iv) any other person to whom, in the opinion of the Court, special notice of the application should be given; and

(b) to be posted on some conspicuous part of the Court-house, and of the residence of the minor, and otherwise published in such manner as the Court, subject to any rules made by the High Court under this Act, thinks fit.

(2) The Local Government may, by general or special order, require that, when any part of the property described in a petition under section 10, sub-section (1), is

* Act XIV. of 1882.

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land of which a Court of Wards could assume the superintendence, the Court shall also cause a notice as aforesaid to be served on the Collector in whose district the minor ordinarily resides, and on every Collector in whose district any portion of the land is situate, and the Collector may cause the notice to be published in any manner he deems fit.

(g) No charge shall be made by the Court or the Collector for the service or publication of any notice served or published under sub-section (a).

12. (1) The Court may direct that the person, if any,

Power to make interlocutory order for production of minor and interim protection of person and property.

having the custody of the minor, shall produce him, or cause him to be produced, at such place and time, and before such person as it appoints, and may make such order for the temporary custody and protection of the person or property of the minor as it thinks proper.

(a) If the minor is a female who ought not to be compelled to appear in public, the direction under sub-section (1) for the production shall require her to be produced in accordance with the customs and manners of the country,

(g) Nothing in this section shall authorize—

(a) the Court to place a female minor in the temporary custody of a person claiming to be her guardian on the ground of his being her husband unless she is already in his custody with the consent of her parents, if any, or

(b) any person to whom the temporary custody and protection of the property of a minor is entrusted, to dispossess, otherwise than by due course of law, any person in possession of any of the property.

13. On the day fixed for the hearing of the application, or as soon afterwards as may be, the Court shall hear such evidence as may be adduced in support of, or in opposition to, the application.

Hearing of evidence before making of order.

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14. (1) If proceedings for the appointment or declaration of a guardian of a minor are taken in more Courts than one, each of those Courts shall, on being apprised of the proceedings in the other Court or Courts, stay the proceedings before itself.

(2) If the Courts are both or all subordinate to the same High Court, they shall report the case to the High Court, and the High Court shall determine in which of the Courts the proceedings with respect to the appointment or declaration of a guardian of the minor shall be had.

(3) In any other case in which proceedings are stayed under sub-section (1), the Courts shall report the case through the Local Government to the Governor-General in Council, and the Governor-General in Council shall determine in which of the Courts the proceedings with respect to the appointment or declaration of a guardian of the minor shall be had.

15. (1) If the law to which the minor is subject admits of his having two or more joint guardians of his person or property, or both, the Court may, if it thinks fit, appoint or declare them.

(2) On the death of a father being an European British subject, who has, by will or other instrument to take effect on his death, appointed a guardian of his minor child, the Court may appoint the mother to be guardian of the child jointly with the guardian appointed by the father.

(3) On the death of a mother being an European British subject, who, during the incapacity of the father of her minor child, has, by will or other instrument to take effect on her death, appointed a guardian of the child, the Court may, if the father becomes capable of acting, appoint him to be sole guardian of the child, or guardian of the child jointly with the guardian appointed by the mother, as it thinks fit.

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(4) Separate guardians may be appointed or declared of the person and of the property of a minor.

(5) If a minor has several properties, the Court may, if it thinks fit, appoint or declare a separate guardian for any one or more of the properties.

16. If the Court appoints or declares a guardian for any property situate beyond the local limits of its jurisdiction, the Court having jurisdiction in the place where the property is situate shall, on production of a certified copy of the order appointing or declaring the guardian, accept him as duly appointed or declared, and give effect to the order.

Appointment or declaration of guardian for property beyond jurisdiction of the Court.

17. (1) In appointing or declaring the guardian of a minor, the Court shall, subject to the provisions of this section, be guided by what, consistently with the law to which the minor is subject, appears, in the circumstances, to be for the welfare of the minor.

(2) In considering what will be for the welfare of the minor, the Court shall have regard to the age, sex, and religion of the minor, the character and capacity of the proposed guardian, and his nearness of kin to the minor, the wishes, if any, of a deceased parent, and any existing or previous relations of the proposed guardian with the minor or his property.

(3) If the minor is old enough to form an intelligent preference, the Court may consider that preference.

(4) As between parents who are European British subjects adversely claiming the guardianship of the person, neither parent is entitled to it as of right, but other things being equal if the minor is a male of tender years or a female, the minor should be given to the mother, and if the minor is a male of an age to require education and preparation for labour and business, then to the father.

(5) The Court shall not appoint or declare any person to be a guardian against his will.

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18. Where a Collector is appointed or declared by the Court in virtue of his office, to be guardian of the person or property or both of a minor, the order appointing or declaring him shall be deemed to authorize and require the person for the time being holding the office to act as guardian of the minor with respect to his person or property or both, as the case may be.

19. Nothing in this chapter shall authorize the Court to appoint or declare a guardian of the property of a minor whose property is under the superintendence of a Court of Wards, or to appoint or declare a guardian of the person—

- (a) of a minor who is a married female, and whose husband is not, in the opinion of the Court, unfit to be guardian of her person, or,
- (b) subject to the provisions of this Act with respect to European British subjects, of a minor whose father is living, and is not, in the opinion of the Court, unfit to be guardian of the person of the minor, or
- (c) of a minor whose property is under the superintendence of a Court of Wards competent to appoint a guardian of the person of the minor.

CHAPTER III.

DUTIES, RIGHTS, AND LIABILITIES OF GUARDIANS.

General.

20. (1) A guardian stands in a fiduciary relation to his ward, and save as provided by the will or other instrument, if any, by which he was appointed, or by this Act, he must not make any profit out of his office.

(2) The fiduciary relation of a guardian to his ward extends to and affects purchases by the guardian of the

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property of the ward, and by the ward of the property of the guardian, immediately or soon after the ward has ceased to be a minor, and generally all transactions between them while the influence of the guardian still lasts or is recent.

21. A minor is incompetent to act as guardian of any minor except his own wife or child, ^{Capacity of minors to act as guardians.} or, where he is the managing member of an undivided Hindu family, the wife or child of another minor member of that family.

22. (1) A guardian appointed or declared by the Court shall be entitled to such allowance, if any, as the Court thinks fit, ^{Remuneration of guardian.} for his care and pains in the execution of his duties.

(2) When an officer of the Government, as such officer is so appointed or declared to be guardian, such fees shall be paid to the Government out of the property of the ward as the local Government, by general or special order, directs.

23. A Collector appointed or declared by the Court to be guardian of the person or property or both of a minor shall, in all ^{Control of Collector as guardian.} matters connected with the guardianship of his ward, be subject to the control of the Local Government, or of such authority as that Government, by notification in the official Gazette,* appoints in this behalf.

Guardian of the Person.

24. A guardian of the person of a ward is charged with the custody of the ward, and ^{Duties of guardian of the person.} must look to his support, health, and

* For notifications appointing authorities to whose control Collectors appointed under the Act shall be subject in—

(1) the Presidency of Bombay, see the Bombay List of Local Rules and Orders, Vol. I, Ed 1896, p 542;

(2) the N.-W. P. and Oudh, see the N.-W. P and Oudh List of Local Rules and Orders, Ed. 1894, p. 148.

education, and such other matters as the law to which the ward is subject requires.

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25. (1) If a ward leaves or is removed from the custody of a guardian of his person, the Court, if it is of opinion that it will be for the welfare of the ward to return to the custody of his guardian, may make an order for his return, and, for the purpose of enforcing the order, may cause the ward to be arrested and to be delivered into the custody of the guardian.

(2) For the purpose of arresting the ward, the Court may exercise the power conferred on a Magistrate of the first class by section 100 of the Code of Criminal Procedure, 1898.*

(3) The residence of a ward against the will of his guardian with a person who is not his guardian does not of itself terminate the guardianship.

26. (1) A guardian of the person appointed or declared by the Court, unless he is the Collector or is a guardian appointed by will or other instrument, shall not, without the leave of the Court by which he was appointed or declared, remove the ward from the limits of its jurisdiction, except for such purposes as may be prescribed.

(2) The leave granted by the Court under sub-section (1) may be special or general, and may be defined by the order granting it.

Guardian of Property.

27. A guardian of the property of a ward is bound to deal therewith as carefully as a man of ordinary prudence would deal with it if it were his own, and, subject to the provisions

* See s 3 (1) of the new Code of Criminal Procedure (Act V. of 1898), according to which the original reference to the Code of 1882 has been altered to that of 1898.

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of this chapter, he may do all acts which are reasonable and proper for the realization, protection, or benefit of the property.

28. Where a guardian has been appointed by will or other instrument, his power to mortgage or charge, or transfer by sale, gift, exchange, or otherwise, immoveable property belonging to his ward, is subject to any restriction which may be imposed by the instrument, unless he has, under this Act, been declared guardian, and the Court which made the declaration permits him, by an order in writing, notwithstanding the restriction, to dispose of any immoveable property specified in the order in a manner permitted by the order.

29. Where a person other than a Collector, or than a guardian appointed by will or other instrument, has been appointed or declared by the Court to be guardian of the property of a ward, he shall not, without the previous permission of the Court,—

(a) mortgage or charge, or transfer by sale, gift, exchange, or otherwise, any part of the immoveable property of his ward, or

(b) lease any part of that property for a term exceeding five years, or for any term extending more than one year beyond the date on which the ward will cease to be a minor.

30. A disposal of immoveable property by a guardian in contravention of either of the two last foregoing sections is voidable at the instance of any other person affected thereby.

31. (1) Permission to the guardian to do any of the acts mentioned in section 29 shall not be granted by the Court except in case of necessity, or for an evident advantage to the ward,

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(2) The order granting the permission shall recite the necessity or advantage, as the case may be, describe the property with respect to which the act permitted is to be done, and specify such conditions, if any, as the Court may see fit to attach to the permission; and it shall be recorded, dated, and signed by the Judge of the Court with his own hand, or, when, from any cause, he is prevented from recording the order with his own hand, shall be taken down in writing from his dictation, and be dated and signed by him.

(3) The Court may, in its discretion, attach to the permission the following among other conditions, namely:—

- (a) that a sale shall not be completed without the sanction of the Court;
- (b) that a sale shall be made to the highest bidder by public auction before the Court or some person specially appointed by the Court for that purpose, at a time and place to be specified by the Court, after such proclamation of the intended sale as the Court, subject to any rules made under this Act by the High Court, directs;
- (c) that a lease shall not be made in consideration of a premium, or shall be made for such term of years, and subject to such rents and covenants, as the Court directs;
- (d) that the whole or any part of the proceeds of the act permitted shall be paid into the Court by the guardian, to be disbursed therefrom, or to be invested by the Court on prescribed securities, or to be otherwise disposed of as the Court directs.

(4) Before granting permission to a guardian to do an act mentioned in section 29, the Court may cause notice of the application for the permission to be given to any relative or friend of the ward who should, in its opinion,

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receive notice thereof, and shall hear and record the statement of any person who appears in opposition to the application.

82. Where a guardian of the property of a ward has been appointed or declared by the Court, and such guardian is not the Collector, the Court may, from time to time, by order, define, restrict, or extend his powers with respect to the property of the ward in such manner and to such extent as it may consider to be for the advantage of the ward and consistent with the law to which the ward is subject.

83. (1) A guardian appointed or declared by the Court may apply by petition to the Court which appointed or declared him for its opinion, advice, or direction on any present question respecting the management or administration of the property of his ward.

(2) If the Court considers the question to be proper for summary disposal, it shall cause a copy of the petition to be served on, and the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks fit.

(3) The guardian, stating in good faith the facts in the petition, and acting upon the opinion, advice, or direction given by the Court, shall be deemed, so far as regards his own responsibility, to have performed his duty as guardian in the subject-matter of the application.

Obligations on guardian of property appointed or declared by the Court.

84. Where a guardian of the property of a ward has been appointed or declared by the Court, and such guardian is not the Collector, he shall,—

(a) if so required by the Court, give a bond, as nearly as may be, in the prescribed form, to the Judge of the Court to enure for the benefit of the Judge

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for the time being, with or without sureties, as may be prescribed, engaging duly to account for what he may receive in respect of the property of the ward ;

- (b) if so required by the Court, deliver to the Court, within six months from the date of his appointment or declaration by the Court, or within such other time as the Court directs, a statement of the immoveable property belonging to the ward, of the money and other moveable property which he has received on behalf of the ward up to the date of delivering the statement, and of the debts due on that date to or from the ward ;
- (c) if so required by the Court, exhibit his accounts in the Court at such times and in such form as the Court from time to time directs ;
- (d) if so required by the Court, pay into the Court, at such time as the Court directs, the balance due from him on those accounts, or so much thereof as the Court directs ; and
- (e) apply, for the maintenance, education, and advancement of the ward, and of such persons as are dependent on him, and for the celebration of ceremonies to which the ward or any of those persons may be a party, such portion of the income of the property of the ward as the Court from time to time directs, and, if the Court so directs, the whole or any part of that property.

35. Where a guardian appointed or declared by the Court has given a bond duly to account for what he may receive in respect of the property of his ward, the Court may, on application made by petition, and on being satisfied that the engagement of the bond has not been kept, and upon such terms as to security, or providing that any money received be paid into the Court or otherwise as the Court thinks fit, assign the bond to some pro-

Suit against guardian where administration-bond was taken.

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per person, who shall thereupon be entitled to sue on the bond in his own name as if the bond had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon, as trustee for the ward, in respect of any breach thereof.

86. (1) Where a guardian appointed or declared by the Court has not given a bond as aforesaid, any person, with the leave of the Court, may, as next friend, at any time during the continuance of the minority of the ward, and upon such terms as aforesaid, institute a suit against the guardian, or, in case of his death, against his representative, for an account of what the guardian has received in respect of the property of the ward, and may recover in the suit, as trustee for the ward, such amount as may be found to be payable by the guardian or his representative, as the case may be.

(2) The provisions of sub-section (1) shall, so far as they relate to a suit against a guardian, be subject to the provisions of section 440 of the Code of Civil Procedure* as amended by this Act.

87. Nothing in either of the two last foregoing sections shall be construed to deprive a guardian as trustee of any remedy against his guardian, or the representative of the guardian, which, not being expressly provided in either of those sections, any other beneficiary or his representative would have against his trustee or the representative of the trustee.

Termination of Guardianship.

88. On the death of one of two or more joint-guardians, the guardianship continues to the survivor or survivors until a further appointment is made by the Court.

* Act XIV. of 1882.

39. The Court may, on the application of any person interested, or of its own motion, remove a guardian appointed or declared by the Court, or a guardian appointed by will or other instrument, for any of the following causes, namely:—

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- (a) for abuse of his trust ;
- (b) for continued failure to perform the duties of his trust ;
- (c) for incapacity to perform the duties of his trust ;
- (d) for ill-treatment, or neglect to take proper care, of his ward ;
- (e) for contumacious disregard of any provision of this Act, or of any order of the Court ;
- (f) for conviction of an offence implying, in the opinion of the Court, a defect of character which unfits him to be the guardian of his ward ;
- (g) for having an interest adverse to the faithful performance of his duties ;
- (h) for ceasing to reside within the local limits of the jurisdiction of the Court ;
- (i) in the case of a guardian of the property, for bankruptcy or insolvency ;
- (j) by reason of the guardianship of the guardian ceasing, or being liable to cease, under the law to which the minor is subject ;

Provided that a guardian, appointed by will or other instrument, whether he has been declared under this Act or not, shall not be removed—

- (a) for the cause mentioned in clause (g), unless the adverse interest accrued after the death of the person who appointed him, or it is shown that that person made and maintained the appointment in ignorance of the existence of the adverse interest, or

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- (b) for the cause mentioned in clause (a), unless such guardian has taken up such a residence as, in the opinion of the Court, renders it impracticable for him to discharge the functions of guardian.

40. (1) If a guardian appointed or declared by the Court desires to resign his office, he may apply to the Court to be discharged.

(2) If the Court finds that there is sufficient reason for the application, it shall discharge him, and, if the guardian making the application is the Collector, and the Local Government approves of his applying to be discharged, the Court shall in any case discharge him.

Cessation of authority of guardian.

41. (1) The powers of a guardian of the person cease—

- (a) by his death, removal, or discharge;
- (b) by the Court of Wards assuming superintendence of the person of the ward;
- (c) by the ward ceasing to be a minor;
- (d) in the case of a female ward, by her marriage to a husband who is not unfit to be guardian of her person, or, if the guardian was appointed or declared by the Court, by her marriage to a husband who is not, in the opinion of the Court, so unfit; or,
- (e) in the case of a ward whose father was unfit to be guardian of the person of the ward, by the father ceasing to be so, or, if the father was deemed by the Court to be so unfit, by his ceasing to be so in the opinion of the Court.

(2) The powers of a guardian of the property cease—

- (a) by his death, removal, or discharge;
- (b) by the Court of Wards assuming superintendence of the property of the ward; or
- (c) by the ward ceasing to be a minor.

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(3) When, for any cause, the powers of a guardian cease, the Court may require him, or, if he is dead, his representative, to deliver, as it directs, any property in his possession or control belonging to the ward, or any accounts in his possession or control relating to any past or present property of the ward.

(4) When he has delivered the property or accounts as required by the Court the Court may declare him to be discharged from his liabilities save as regards any fraud which may subsequently be discovered.

42. When a guardian appointed or declared by the Court is discharged, or, under the law to which the ward is subject, ceases to be entitled to act, or when any such guardian or a guardian appointed by will or other instrument is removed or dies, the Court, of its own motion, or on application under Chapter II., may, if the ward is still a minor, appoint or declare another guardian of his person or property, or both, as the case may be.

CHAPTER IV.

SUPPLEMENTAL PROVISIONS.

43. (1) The Court may, on the application of any person interested, or of its own motion, make an order regulating the conduct or proceedings of any guardian appointed or declared by the Court.

Orders for regulating conduct or proceedings of guardians, and enforcement of those orders.

(2) Where there are more guardians than one of a ward, and they are unable to agree upon a question affecting his welfare, any of them may apply to the Court for its direction, and the Court may make such order respecting the matter in difference as it thinks fit.

(3) Except where it appears that the object of making an order under sub-section (1) or sub-section (2) would be defeated by the delay, the Court shall, before making the

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order direct, notice of the application therefor, or of the intention of the Court to make it, as the case may be, to be given, in a case under sub-section (1), to the guardian, or, in a case under sub-section (2), to the guardian who has not made the application.

(4) In case of disobedience to an order made under sub-section (1) or sub-section (2), the order may be enforced in the same manner as an injunction granted under section 492 or section 493 of the Code of Civil Procedure* in a case under sub-section (1), as if the ward were the plaintiff, and the guardian were the defendant, or, in a case under sub-section (2), as if the guardian who made the application were the plaintiff, and the other guardian were the defendant.

(5) Except in a case under sub-section (2), nothing in this section shall apply to a Collector who is, as such, a guardian.

44. If, for the purpose or with the effect of preventing the Court from exercising its authority with respect to a ward, a guardian appointed or declared by the Court removes the ward from the limits of the jurisdiction of the Court in contravention of the provisions of section 26, he shall be liable, by order of the Court, to fine not exceeding one thousand rupees, or to imprisonment in the civil jail for a term which may extend to six months.

Penalty for contumacy.

45. (1) In the following cases, namely:—

- (a) if a person having the custody of a minor fails to produce him or cause him to be produced in compliance with a direction under section 12, sub section (1), or to do his utmost to compel the minor to return to the custody of his guardian in obedience to an order under section 25, sub section (1), or

* Act XIV. of 1882.

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(b) If a guardian appointed or declared by the Court fails to deliver to the Court, within the time allowed by or under clause (b) of section 34, a statement required under that clause, or to exhibit accounts in compliance with a requisition under clause (c) of that section, or to pay into the Court the balance due from him on those accounts in compliance with a requisition under clause (d) of that section, or

(c) if a person who has ceased to be a guardian, or the representative of such a person, fails to deliver any property or accounts in compliance with a requisition under section 41, sub-section (3),

the person, guardian, or representative, as the case may be, shall be liable, by order of the Court, to fine not exceeding one hundred rupees, and, in case of recusancy, to further fine not exceeding ten rupees for each day after the first during which the default continues, and not exceeding five hundred rupees in the aggregate, and to detention in the civil jail until he undertakes to produce the minor, or cause him to be produced, or to compel his return, or to deliver the statement, or to exhibit the accounts, or to pay the balance, or to deliver the property or accounts, as the case may be.

(2) If a person who has been released from detention on giving an undertaking under sub-section (1) fails to carry out the undertaking within the time allowed by the Court, the Court may cause him to be arrested and re-committed to the civil jail.

46. (1) The Court may call upon the Collector, or Reports by Collectors and Subordinate Courts. upon any Court subordinate to the Court, for a report on any matter arising in any proceeding under this Act, and treat the report as evidence.

(2) For the purpose of preparing the report, the Collector or the Judge of the subordinate Court, as the case

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may be, shall make such inquiry as he deems necessary, and may, for the purposes of the inquiry, exercise any power of compelling the attendance of a witness to give evidence, or produce a document, which is conferred on a Court by the Code of Civil Procedure.*

Orders appealable. **47.** An appeal shall lie to the High Court from an order made by a District Court,—

- (a) under section 7, appointing or declaring, or refusing to appoint or declare, a guardian ; or,
- (b) under section 9, sub-section (3), returning an application ; or,
- (c) under section 25, making or refusing to make an order for the return of a ward to the custody of his guardian ; or,
- (d) under section 26, refusing leave for the removal of a ward from the limits of the jurisdiction of the Court, or imposing conditions with respect thereto ; or,
- (e) under section 28 or section 29, refusing permission to a guardian to do an act referred to in the section ; or,
- (f) under section 32, defining, restricting, or extending the powers of a guardian ; or,
- (g) under section 39, removing a guardian ; or,
- (h) under section 40, refusing to discharge a guardian ; or,
- (i) under section 43, regulating the conduct or proceedings of a guardian, or settling a matter in difference between joint guardians, or enforcing the order ; or,
- (j) under section 44 or section 45, imposing a penalty.

* Act XIV. of 1882.

48. Save as provided by the last foregoing section, and by section 622 of the Code of Civil Procedure,* an order made under this Act shall be final, and shall not be liable to be contested by suit or otherwise.

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49. The costs of any proceeding under this Act, including the costs of maintaining a guardian or other person in the civil jail, shall, subject to any rules made by the High Court under this Act, be in the discretion of the Court in which the proceeding is had.

50. (1) In addition to any other power to make rules conferred expressly or impliedly by this Act, the High Court may, from time to time, make rules consistent with this Act—

(a) as to the matters respecting which, and the time at which, reports should be called for from Collectors and subordinate Courts;

(b) as to the allowances to be granted to, and the security to be required from, guardians, and the cases in which such allowances should be granted;

(c) as to the procedure to be followed with respect to applications of guardians for permission to do acts referred to in sections 28 and 29;

(d) as to the circumstances in which such requisitions as are mentioned in clauses (a), (b), (c), and (d) of section 34 should be made;

(e) as to the preservation of statements and accounts delivered and exhibited by guardians;

(f) as to the inspection of those statements and accounts by persons interested;

(g) as to the custody of money, and securities for money, belonging to wards;

* Act XIV. of 1882.

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(h) as to the securities on which money belonging to wards may be invested ;

(i) as to the education of wards for whom guardians, not being Collectors, have been appointed or declared by the Court ; and,

(j) generally for the guidance of the Courts in carrying out the purposes of this Act.

(2) Rules under clauses (a) and (f) of sub-section (1) shall not have effect until they have been approved by the Local Government, nor shall any rule under this section have effect until it has been published in the official Gazette.

51. A guardian appointed by, or holding a certificate of administration from, a Civil Court, under any enactment repealed by this Act, shall, save as may be prescribed, be subject to the provisions of this Act, and of the rules made under it, as if he had been appointed or declared by the Court under Chapter II.

52. In section 3 of the Indian Majority Act, 1875,* for the words, "every minor of whose person or property a guardian has been appointed by any Court of Justice, and every minor under the jurisdiction of any Court of Wards," the following shall be substituted, namely :—

"every minor of whose person or property, or both, a guardian, other than a guardian, for a suit within the meaning of Chapter XXXI. of the Code of Civil Procedure,† has been or shall be appointed or declared by any Court of Justice before the minor has attained the age of eighteen years, and every minor of whose property the superintendence has been or shall be assumed by any Court of Wards before the minor has attained that age."

Amendment of Chapter XXXI. of the Code of Civil Procedure.

53. Chapter XXXI. of the Code of Civil Procedure† shall be amended as follows, namely :—

* Act IX. of 1875

† Act XIV. of 1882.

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A.—To section 440 of the said Code the following shall be added, namely :—

"If a minor has a guardian appointed or declared by an authority competent in this behalf, a suit shall not be instituted on behalf of the minor by any person other than such guardian, except with the leave of the Court granted after notice to such guardian, and after hearing any objections which he may desire to make with respect to the institution of the suit, and the Court shall not grant such leave unless it is of opinion that it is for the welfare of the minor that the person proposing to institute the suit in the name of the minor should be permitted to do so."

B.—To section 443 of the said Code the following shall be added, namely :—

"Where an authority competent in this behalf has appointed or declared a guardian or guardians of the person or property, or both, of the minor, the Court shall appoint him, or one of them, as the case may be, to be the guardian for the suit under this section, unless it considers, for reasons to be recorded by it, that some other person ought to be so appointed."

C.—After section 446 of the said Code the following shall be added, namely :—

"If the next friend is not a guardian appointed or declared by an authority competent in this behalf, and an application is made by a guardian so appointed or declared, who desires to be himself appointed in the place of the next friend, the Court shall remove the next friend, unless it considers, for reasons to be recorded by it, that the guardian ought not to be appointed the next friend of the minor."

D.—For section 461 of the said Code the following shall be substituted, namely :—

"461. (1) A next friend or guardian for the suit shall not, without the leave of the Court, receive any money or other moveable property on behalf of a minor, either—
Receipt by next friend or guardian *ad litem* of property under decree for minor.

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- (a) by way of compromise before decree or order, or
(b) under a decree or order in favour of the minor.

"(2) Where the next friend or guardian for the suit has not been appointed or declared by competent authority to be guardian of the property of the minor, or having been so appointed or declared, is under any disability known to the Court to receive the money or other moveable property, the Court shall, if it grants him leave to receive the property, require such security, and give such directions, as will, in its opinion, sufficiently protect the property from waste, and insure its proper application."

E.—For section 464 of the said Code as amended by the Civil Procedure Code Amendment Act, 1888,* the following shall be substituted, namely :—

"464. Nothing in this chapter applies to a Sovereign Princes and Chiefs Prince or Ruling Chief suing or being and Wards of Court. sued in the name of his State, or being sued, by direction of the Governor-General in Council or a Local Government, in the name of an agent, or in any other name, or shall be construed to affect, or in any way derogate from, the provisions of any local law for the time being in force relating to suits by or against minors, or by or against lunatics or other persons of unsound mind.

* Act VII. of 1888.

THE SCHEDULE.
ENACTMENTS REPEALED.
(See Section 2)

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Number and year	Title or subject.	Extent of repeal.
<i>Acts of the Governor-General in Council.</i>		
XIV. of 1858 ...	Minors (Madras)...	The whole
XL of 1858 ...	Minors (Bengal)...	So much as has not been repealed.
IX. of 1861 ...	Minors	The whole.
XX. of 1864 ...	Minors (Bombay).	The whole
XIV of 1869 ...	Bombay Civil Courts Act, 1869	So much of the last paragraph of section 16 as has not been repealed.
VII of 1870 ..	Court-fees Act, 1870	Section 19H and article 10 of Schedule I.
IV of 1872 ...	Punjab Laws Act, 1872	So far as it relates to Act XL. of 1858.
XIX of 1873* ...	North-Western Provinces Land-Revenue Act, 1873	Section 258.
XIII. of 1874 ...	European British Minors Act, 1874	The whole.
XV of 1874 ...	Laws Local Extent Act, 1874	So far as it relates to any enactment repealed by this Act.
XX. of 1875 ...	Central Provinces Laws Act, 1875.	So far as it relates to Act XL. of 1858.
XVIII of 1876...	Oudh Laws Act, 1876.	So far as it relates to Act XL of 1858.
XIII of 1879 ...	Oudh Civil Courts Act, 1879	Clause (1) of section 25 relating to proceedings under Acts XL of 1858 and IX of 1861.

* Act XIX. of 1873 has been repealed by N. W. P. Act III of 1901.

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THE SCHEDULE—(*Continued*).

ENACTMENTS REPEALED—(*Continued*).

Number and year.	Title or subject.	Extent of repeal
<i>Acts of the Governor-General in Council—(contd.)</i>		
XIV. of 1882 ...	Code of Civil Procedure	The second paragraph of section 443.
XVIII. of 1884...	Punjab Courts Act, 1884	So much of section 29 as has not been repealed.
XII. of 1887 ...	Bengal, North-Western Provinces and Assam Civil Courts Act, 1887.	Clause (b) of section 23 sub-section (a).

Madras Regulation.

V. of 1804 ...	Court of Wards ...	Section 20, and so much of sections 21 and 22 as relates to persons and property of minors not subject to the superintendence of the Court of Wards
X. of 1831 ...	Minors' Estates ...	Section 3.

Regulations under the Statute 33 Victoria, Chapter 3.

IX. of 1874 ...	Arakan Hill District Laws	So far as it relates to Acts XL. of 1858 and IX. of 1861
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ACT XV. OF 1856 :

The Hindu Widows' Re-marriage Act, 1856.*

RECEIVED THE G.-G.'s ASSENT ON THE 25TH JULY 1856.

An Act to remove all Legal Obstacles to the Marriage of Hindu Widows.

WHEREAS it is known that, by the law as administered in the
Preamble. Civil Courts established in the territories
in the possession and under the govern-
ment of the East India Company, Hindu widows, with certain
exceptions, are held to be, by reason of their having been once

* This is the short title given to this Act by the Indian Short Titles Act (XIV of 1897).

This Act has been declared to be in force in—

- (1) the whole of British India except as regards the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.
- (2) the Santhal Parganas, by the Santhal Parganas Settlement Regulation (III. of 1872), s. 3, as amended by Regulation III. of 1899 :
- (3) the Arakan Hill District, by the Arakan Hill District Laws Regulation (IX. of 1874) :
- (4) Angul and the Khondmals, by the Angul District Regulation (I. of 1894).

It has been declared, by notification under s 3 (a) of the Scheduled Districts Act (XIV of 1874), to be in force in the following Scheduled Districts, namely :—

- (1) Sindh (see *Gazette of India*, 1880, Pt. I., p. 672) .
- (2) West Jalpaiguri (see *Gazette of India*, 1881, Pt. I., p. 74) .
- (3) The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singhbhum (see *Gazette of India*, 1881, Pt. I., p. 504) :
- (4) Kumaon and Garhwal (see *Gazette of India*, 1876, Pt. I., p. 605) .
- (5) The scheduled portion of the Mirzapur District (see *Gazette of India*, 1879, Pt. I., p. 383)
- (6) Jaunsar Bawar (see *Gazette of India*, 1879, Pt. I., p. 382) :
- (7) The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, and Dera Ghazi Khan (see *Gazette of India*, 1886, Pt. I., p. 48)
- (8) District of Lahaul (see *Gazette of India*, 1886, Pt. I., p. 301) .
- (9) The Scheduled Districts of the Central Provinces (see *Gazette of India*, 1879, Pt. I., p. 771) :
- (10) Coorg (see *Gazette of India*, 1878, Pt. I., p. 747) :

married, incapable of contracting a second valid marriage, and the offspring of such widows by any second marriage are held to be illegitimate and incapable of inheriting property, AND WHEREAS many Hindus believe that this imputed legal incapacity, although it is in accordance with established custom, is not in accordance with a true interpretation of the precepts of their religion, and desire that the civil law administered by the Courts of Justice shall no longer prevent those Hindus who may be so minded from adopting a different custom, in accordance with the dictates of their own conscience; AND WHEREAS it is just to relieve all such Hindus from this legal incapacity of which they complain; and the removal of all legal obstacles to the marriage of Hindu widows will tend to the promotion of good morals and to the public welfare; It is enacted as follows :—

1. No marriage contracted between Hindus shall be invalid, and the issue of no such marriage shall be legalized. Marriage of Hindu widows be illegitimate, by reason of the woman having been previously married or betrothed to another person who was dead at the time of such marriage, any custom and any interpretation of Hindu Law to the contrary notwithstanding.

2. All rights and interests which any widow may have in her deceased husband's property by way of maintenance, or by inheritance to her husband, or to his lineal successors, or by virtue of any will or testamentary disposition conferring upon

(11) The District of Silhat (see *Gazette of India*, 1879, Pt. I, p. 631)

(12) The Districts of Kamrup, Naugong, Darrang, Sibsagar, Lakhimpur, Goalpara (excluding the Eastern Dvars), and Cachar (excluding the North Cachar Hills) (see *Gazette of India*, 1878, Pt. I, p. 533).

(13) The Garo Hills, the Khasi and Jaintia Hills, the Naga Hills, the North Cachar Hills in the Cachar District, and the Eastern Dvars in the Goalpara District (see *Gazette of India*, 1897, Pt. I, p. 299).

(14) The Porahat Estate in the Singbhum District (see *Gazette of India*, 1897, Pt. I, p. 1059)

It has been extended, by notification under s 5 of the last-mentioned Act, to the following Scheduled Districts, namely —

(1) The Tarai District (see *Gazette of India*, 1876, Pt. I, p. 505).

(2) The Andaman and Nicobar Islands (see *Gazette of India*, 1882, Pt. I, p. 148).

As to the effect of unchastity in the case of a widow who has once inherited, see 13 B. L. R. 1.

her, without express permission to re-marry, only a limited interest in such property, with no power of alienating the same, shall, upon her re-marriage, cease and determine as if she had then died;* and the next heirs of her deceased husband, or other persons entitled to the property on her death, shall thereupon succeed to the same.

3. On the re-marriage of a Hindu widow, if neither the widow nor any other person has been expressly constituted, by the will or testamentary disposition of the deceased husband, the guardian of his children, the father or paternal grandfather, or the mother or paternal grandmother, of the deceased husband, or any male relative of the deceased husband, may petition the highest Court, having original jurisdiction in civil cases in the place where the deceased husband was domiciled at the time of his death, for the appointment of some proper person to be guardian of the said children, and thereupon it shall be lawful for the said Court, if it shall think fit, to appoint such guardian, who, when appointed, shall be entitled to have the care and custody of the said children, or of any of them, during their minority, in the place of their mother; and, in making such appointment, the Court shall be guided, so far as may be, by the laws and rules in force touching the guardianship of children who have neither father nor mother:

Provided that, when the said children have not property of their own sufficient for their support and proper education whilst minors, no such appointment shall be made otherwise than with the consent of the mother unless the proposed guardian shall have given security for the support and proper education of the children whilst minors.

4. Nothing in this Act contained shall be construed to render any widow, who, at the time of the death of any person leaving any property, is a childless widow, capable of inheriting the whole or any share of such property, if, before the passing of this Act, she would have been incapable of inheriting the same by reason of her being a childless widow.

5. Except as in the three preceding sections is provided, a widow shall not, by reason of her re-marriage, forfeit any property, or any right to which she would otherwise be

* *Parvati v. Bhiku*, 4 Bom. A. C. J. 25; *Akera Suth v. Boreani*, 2 B. L. R. 198.

entitled; and every widow who has re-married shall have the same rights of inheritance as she would have had had such marriage been her first marriage.

6. Whatever words spoken, ceremonies performed, or engagements made, on the marriage of a Hindu female who has not been previously married, are sufficient to constitute a valid marriage, shall have the same effect if spoken, performed, or made on the marriage of a Hindu widow, and no marriage shall be declared invalid on the ground that such words, ceremonies, or engagements are inapplicable to the case of a widow.

7. If the widow re-marrying is a minor whose marriage has not been consummated, she shall not consent to re-marriage of minor widow. re-marry without the consent of her father, or, if she has no father, of her paternal grandfather, or, if she has no such grandfather, of her mother, or, failing all these, of her elder brother, or, failing also brothers, of her next male relative.

All persons knowingly abetting a marriage made contrary to the provisions of this section shall be liable to imprisonment for any term not exceeding one year, or to fine, or to both.

And all marriages made contrary to the provisions of this section may be declared void by a Court of law: Provided that, in any question regarding the validity of a marriage made contrary to the provisions of this section, such consent as is aforesaid shall be presumed until the contrary is proved, and that no such marriage shall be declared void after it has been consummated.

In the case of a widow who is of full age, or whose marriage has been consummated, her own consent shall be sufficient consent to constitute her re-marriage lawful and valid.

THE HINDU WILLS ACT, 1870 (Act XXI. of 1870).*

RECEIVED THE G.-G.'s ASSENT ON 19TH JULY 1870.

An Act to regulate the Wills of Hindus, Jainas, Sikhs, and Buddhists in the Lower Provinces of Bengal, and the Towns of Madras and Bombay.

WHEREAS it is expedient to provide rules for the execution, attestation, revocation, revival, interpretation, and probate of the wills of Hindus, Jainas, Sikhs, and Buddhists in the territories subject to the Lieutenant-Governor of Bengal, and in the towns of Madras and Bombay; It is hereby enacted as follows:—

Short title.

1. This Act may be called the Hindu Wills Act, 1870.

Certain portions of Act X. of 1865 extended to wills of Hindus, Jainas, Sikhs, and Buddhists.

2. The following portions of the Indian Succession Act, 1865,† namely,—

* For the Statement of Objects and Reasons, see *Gazette of India*, 1860, Pt. V, p. 32; for the first Report of the Select Committee, which was ordered to be published by the Council, see *ibid*, 1870, Pt. V., p. 11; for Proceedings in Council, see *ibid*, 1869, Supplement, p. 1499; Supplement, 1870, p. 76. Extra Supplement, p. 34, and Supplement, p. 957.

Act XXI of 1870 has been declared by notification under s. 3 (a) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts, namely:—

The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singbhum.—See *Gazette of India*, 1881, Pt. I., p. 504.

[The District of Lohardaga included at this time the present District of Palamau, which was separated in 1894.]

It has been declared to be in force in the Santhal Parganas, by Reg. III. of 1872, s. 3, as amended by the Santhal Parganas Justice and Laws Regulation (III of 1869), s. 3.

† Act X. of 1865.

[26-5 00—4,000.]

XXI, 1870.—1.

4. On and from that day, section 2 of Bengal Regulation V. of 1799 shall be repealed, so far as relates to the executors of persons who are not Muhammadans, but are subject to the jurisdiction of a District Court in the territories subject to the Lieutenant-Governor of Bengal.

5. Nothing contained in this Act shall affect the rights, duties, and privileges of the Administrators-General of Bengal, Madras, and Bombay, respectively.*

6. In this Act and in the said sections† of the Indian Succession Act,‡ all words defined in section 3 of the same Act shall, unless there be something repugnant in the subject or context, be deemed to have the same meaning as the said section 3 has attached to such words respectively :

And in applying sections 62, 63, 92, 96, 98, 99, 100, 101, 102, "and 103"§ of the said Succession Act† to wills and codicils made under this Act, the words "son," "sons," "child," and "children," shall be deemed to include an adopted child; and the word "grandchildren" shall be deemed to include the children, whether adopted or natural-born, of a child, whether adopted or natural-born; and the expression "daughter-in-law" shall be deemed to include the wife of an adopted son ||

* See the Administrator-Generals Act (II of 1874)

† The words "and Parts," repealed by the Repealing and Amending Act (XII of 1891), have here been omitted*

‡ Act X of 1865

§ The word and figures "and 103" have been substituted for the word and figures "103 and 182" by s. 154 (c) of the Probate and Administration Act (V of 1881)

|| The last clause of s 6 as to the making of grants of letters of administration, repealed by s 154 (b) of the Probate and Administration Act (V. of 1881), has here been omitted.

ACT II. OF 1886.

The Indian Income Tax Act, 1886.

[As modified up to September, 1907.]

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ACT II. OF 1886.

The Indian Income Tax Act, 1886.*

RECEIVED THE G.-G.'s ASSENT ON THE 29TH JANUARY 1886.

An Act for imposing a Tax on Income derived from Sources other than Agriculture.

WHEREAS it is expedient to impose a tax on income derived from sources other than agriculture; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. (1) This Act extends to the whole of British India, and applies also, within the dominions of Princes and States in India in alliance with Her Majesty, to British subjects in those dominions who are in the service of the Government of India, or of a local authority established in the exercise of the powers of the Governor-General in Council in that behalf, and

(2) It shall come into force on the first day of April 1886.

(3) [*Repealed by the Repealing and Amending Act (XII. of 1891) Sch. I.*]

* This short title has been given by the Indian Short Titles Act (XIV. of 1897).

For Statement of Objects and Reasons, see Gazette of India, 1886, Pt. V., p. 33; for Report of the Select Committee, see *Ibid*, Pt. IV, p. 41; and for Proceedings in Council, see *Ibid*, Supplement, pp. 45, 179, and 214. For consolidated rules made under the powers conferred by the Act, see Gazette of India, 1890, Pt. I., p. 409—Notification No 2763.

Act II. of 1886 has been declared in force in the Santhál Parganas by the Santhál Parganas Settlement Regulation (III. of 1872), s. 3, as amended by the Santhál Parganas Laws Regulation (III. of 1899), and in Upper Burma (except the Shan States) by the Burma Laws Act (XIII. of 1898), (see the first schedule and s. 4).

The Act had already been extended there under s. 5 of the Scheduled Districts Act (XIV. of 1874).—See Gazette of India, 1896, Pt. I., p. 974

2. On and from the day on which this Act comes into force, the enactments specified in the first schedule, to this Act shall be repealed, except as to fees payable and other sums due under those enactments and the mode of recovering the same.

Definitions.

3. In this Act, unless there is something repugnant in the subject or context,—

(1) "local authority" means any municipal committee, district board, body of port commissioners, or other authority legally entitled to, or entrusted by the Government with, the control or management of any municipal or local fund :

(2) "company" means an association carrying on business in British India, whose stock or funds is or are divided into shares and transferable, whether the company is incorporated or not, and whether its principal place of business is situate in British India or not :

(3) "prescribed" means prescribed by the Governor-General in Council by notification in the Gazette of India, or by the Governor-General in Council or a Local Government by rules made under this Act :

(4) "salary" includes allowances, fees, commissions, perquisites, or profits received, in lieu of, or in addition to, a fixed salary, in respect of an office or employment of profit ; but subject to any rules which may be prescribed in this behalf, it does not include travelling, tentage, horse, or sumptuary allowance, or any other allowance granted to meet specific expenditure :

(5) "income" means income and profits accruing and arising or received in British India, and includes, in the case of a British subject within the dominions of a Prince or State in India in alliance with Her Majesty, any salary, annuity, pension, or gratuity payable to that subject by the Government, or by a local authority established in the exercise of the powers of the Governor-General in Council in that behalf ;

(6) "Magistrate" means a Presidency Magistrate or a Magistrate of the first or second class :

(7) "person" includes a firm and a Hindoo undivided family :

(8) "defaulter" includes a company or firm making default under this Act :

(9) "Collector" means the chief officer in charge of the revenue administration of a district, and in a presidency-town, any officer

whom the Local Government, by notification in the official Gazette, may, by name or by virtue of his office, appoint to be a Collector for the purposes of this Act; in the case of a company or firm, it means the Collector, as here defined, of the district or presidency-town in which its principal place of business in British India is situate; and, in the case of any other person chargeable under this Act, it means the Collector, defined as aforesaid, of the district or presidency-town in which the person has his residence.

(10) "principal officer," used with reference to a local authority or a company or any other public body or association not being a local authority or company, means—

(a) the secretary, treasurer, manager, or agent of the authority, company, body, or association; or

(b) any person connected with the authority, company, body, or association upon whom the Collector has caused a notice to be served of his intention of treating him as the principal officer thereof; and

(11) "Part" means a Part of the second schedule to this Act.

CHAPTER II.

LIABILITY TO TAX.

4. Subject to the exceptions mentioned in the next following section, there shall be paid, in the year beginning with the first day of April 1886, and in each subsequent year, to the credit of the Government of India, or as the Governor-General in Council directs, in respect of the sources of income specified in the first column of the second schedule to this Act, a tax at the rate specified in that behalf in the second column of that schedule.

Exceptions.

5. (1) Nothing in section 4 shall render liable to the tax—

(a) any rent or revenue derived from land which is used for agricultural purposes, and is either assessed to land-revenue or subject to a local rate assessed and collected by officials of the Government as such; or

(b) any income derived from—

(i) agriculture, or

- (ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market, or
- (iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, when he does not keep a shop or stall for the sale of such produce; or
- (c) any building owned and occupied by the receiver of the rent or revenue of any such land as is referred to in clause (a), or by the cultivator, or the receiver of rent-in-kind, of any land with respect to which, or the produce whereof, any operation mentioned in clause (b) is carried on :

Provided that the building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue, or the cultivator or the receiver of the rent-in-kind, by reason of his connection with the land, requires as a dwelling-house, or as a store-house, factory, or other out-building ; or

(d) any profits of a shipping company incorporated or registered out of British India, and having its principal place of business out of India, and its ships ordinarily engaged in sea-going traffic out of Indian waters ; or

(e) any income derived from property solely employed for religious or public charitable purposes ; or

(f) any income which a person enjoys as a member of a company, or of a firm, or of a Hindu undivided family, when the company, or the firm, or the family is liable to the tax ; or

(g) subject to any conditions and restrictions which may be prescribed in this behalf, such portion, not exceeding one-sixth of the income in respect whereof a person would, but for this exception, be chargeable under this Act, as is deducted from the salary of the person under the authority, or with the permission, of the Government for the purpose of securing a deferred annuity to him or a provision to his wife or children after his death, or is paid by the person to an insurance company in respect of an insurance or deferred annuity on his own life, or on the life of his wife ; or

(h) any interest on stock-notes ; or

(i) the salary of any officer, warrant-officer, non-commissioned officer, or private of Her Majesty's Forces, or of Her Majesty's

Indian Forces, who is not in an employment which, according to the ordinary practice, is held indifferently by military persons and civilians, and whose salary does not exceed five hundred rupees per mensem; or

(j) any person whose income from all sources is less than "one thousand" * rupees per annum.

(2) An officer or servant is not exempt from taxation under this Act by reason only of the income of his employer being exempt therefrom under this section.

6. The Governor-General in Council may, by notification in the Gazette of India, exempt from liability to the tax† the whole or any part of the income of any class or tribe, or of any persons residing in any specified area, and may, by a like notification, revoke the exemption.

CHAPTER III.

ASSESSMENT AND COLLECTION.

A.—SALARIES AND PENSIONS.

7. In the case of a person receiving any salary, annuity, pension, or gratuity from the Government, any sum payable to him by the Government in respect of the salary, annuity, pension, or gratuity, shall be reduced by the amount of the tax to which he is liable under Part I. in respect thereof.

8. (1) In the case of a person receiving any salary, annuity, pension, or gratuity from a local authority, the tax to which he is liable under Part I. shall, at the time of the payment to him of any of the salary, annuity, pension, or gratuity, be deducted therefrom by the officer whose duty it is to make the payment, and be paid by that officer within the prescribed time to the credit of the Government of India, or as the Governor General in Council directs.

* These words have been substituted for the words "five hundred" by Act XI. of 1903, s. 2 (1)

† For the consolidated notification as to exemptions from tax and assessment under the Act, issued under s. 6, and s. 38, see Gazette of India, 1890, Pt. I., p. 408, and *Ibid*, 1893, Pt. I., p. 647.

(2) If that officer does not deduct and pay the tax as required by sub-section (1), he shall, without prejudice to any other consequences which he may incur, be deemed to be personally in default in respect of the tax.

(3) If, when any payment is made, the tax is, from any cause, not deducted, it may, and on the requisition of the Collector shall, be deducted when any salary, annuity, pension, or gratuity, is subsequently paid to the person liable to the tax.

(4) The power to deduct under this section shall be without prejudice to any other mode of recovery.

9. (1) The tax to which a person receiving any salary, annuity, pension, or gratuity from a company, or from any other public body or association not being a local authority or company, or from a private employer, is liable under Part I., shall be payable by him at the time when any portion of the salary, annuity, pension, or gratuity, is paid to him.

(2) The Collector may, subject to such conditions as may be prescribed, enter into an arrangement with any company, or any such body or association as aforesaid, or any private employer, with respect to the recovery, on behalf of the Government by the company, body, association, or employer, of the tax to which any person, receiving any salary, annuity, pension, or gratuity, from the company, body, association, or employer, is liable under Part I.

10. The principal officer of every local authority, and of every company, and of every other public body or association, not being a local authority or company, shall prepare, and, on or before the fifteenth day of April in each, year, deliver, or cause to be delivered, to the Collector, in the prescribed form, a return in writing showing—

(a) the name of every person who is receiving, at the date of the return, any salary, annuity, or pension, or has received, during the year ending on that date, any gratuity from the authority, company, body, or association, as the case may be, and the address of every such person, so far as it is known; and

(b) the amount of the salary, annuity, pension, or gratuity so received by each such person, and the time at which the same becomes payable, or, in the case of a gratuity, was paid.

B.—PROFITS OF COMPANIES.

11. The principal officer in British India of every company shall prepare, and, on or before the fifteenth day of April in each year, deliver, or cause to be delivered, to the Collector, a statement in writing signed by him of the nett profits made in British India by the company during the year ending on the day on which the company's accounts have been last made up, or, if the company's accounts have not been made up within the year ending on the thirty-first day of March in the year immediately preceding that for which the assessment is to be made, then of the nett profits so made during the year ending on the said thirty-first day of March.

12. (1) If the Collector has reason to believe that a statement delivered under section 11 is incorrect or incomplete, he may cause to be served on the principal officer of the company a notice requiring him, on or before a date to be therein mentioned, either to attend at the Collector's office and produce, or to cause to be there produced, for the inspection of the Collector, such of the accounts of the company as refer to the year to which the statement relates, and as are in his possession or power.

(2) On the day specified in the notice, or as soon afterwards as may be, the Collector shall, by an order in writing, determine the amount at which the company shall be assessed under Part II., and the time when the amount shall be paid, and, subject to the provisions of this Act, that amount shall be payable accordingly.

C.—INTEREST ON SECURITIES.

13. (1) The tax payable under Part III. in respect of the interest on any of the securities mentioned in that Part shall, at the time when, and place where, any of the interest is paid, be deducted therefrom by the person empowered to pay the interest, and be paid by that person within the prescribed time to the credit of the Government of India, or as the Governor-General in Council directs.

(2) If that person does not deduct and pay the tax as required by sub section (1), he shall, without prejudice to any other consequences which he may incur, be deemed to be personally in default in respect of the tax.

D.—OTHER SOURCES OF INCOME.

Ordinary Mode of Assessment and Collection.

14. The Collector shall, from time to time, determine what persons are chargeable under Part IV., and the amount at which every person so chargeable shall be assessed.

15. (1) The assessment shall be made upon the income accruing to the person during the year ending on the day on which his accounts have been last made up, or, if his accounts have not been made up within the year ending on the thirty-first day of March in the year immediately preceding that for which the assessment is to be made, then upon the income accruing to him during the year ending on the said thirty-first day of March.

(2) In the case of a person for the first time becoming chargeable under Part IV. within the year for which the assessment is to be made, or within the year next before that year, the assessment shall be made according to an average of his income for such period as the Collector, having regard to the circumstances, directs.

16. (1) The Collector shall in each year prepare a list of the persons chargeable under Part IV., whose annual income does not, in his opinion, amount to two thousand rupees.

(2) The list shall be in the prescribed language or languages, and shall state in respect of every such person the following particulars, namely :—

(a) his name, and the source or sources of the income in respect of which he is chargeable ;

(b) the year or portion of the year for which the tax is to be paid ;

(c) the place or places, district or districts, where the income accrues ;

(d) the amount to be paid ; and

(e) the place where, and the person to whom, the amount is to be paid.

(3) The list shall be filed in the office of the Collector, with a notification prefixed thereto, requiring every person mentioned in

the list to pay, within sixty days from a date specified in the notification, the amount stated in the list as payable by him, or to apply to the Collector, within thirty days from that date, to have the assessment reduced or cancelled.

(4) The list so filed shall be open to inspection at all reasonable times without any payment.

(5) The list, or such part of parts thereof as the Collector thinks fit, with the notification prefixed thereto, shall be further published in such manner as the Local Government may consider to be best adapted for giving information to all persons concerned.

(6) The list to be prepared in each year may be the list of the previous year with such amendments as the Collector finds to be necessary.

17. In the case of a person chargeable under Part IV., whose

Notices to persons with annual income is, in the Collector's opinion, two thousand rupees or upwards, the Collector shall cause a notice to be served on him, stating the particulars (a) to (e), both inclusive, mentioned in section 16, sub-section (2), and requiring him to pay within sixty days from a date specified in the notice, the amount stated therein as payable by him, or to apply to the Collector, within thirty days from that date, to have the assessment reduced or cancelled.

Power to modify ordinary procedure in special cases.

18. (1) Notwithstanding anything contained in section 16 or section 17, the Local Government may make rules—

(a) authorizing or directing a Collector in specified cases or classes of cases to include, in a list under section 16, any person who is liable to be served with a notice under section 17 instead of, or in addition to, serving him with such a notice, and to serve a notice under section 17 on any person liable to be included in a list under section 16 instead of, or in addition to, including him in such a list;

(b) authorizing the Collector in any specified town or place to cause a general notice to be published, inviting every person chargeable under Part IV. to deliver, or cause to be delivered, to the Collector, within a time specified in the notice, a return, in a prescribed form published with the notice, of his income during the year ending on the day on which his accounts have been last made up, or, if his accounts have not been made up within the year—

ending on the thirty-first day of March in the year immediately preceding that for which the assessment is to be made, then of his income during the year ending on the said thirty-first day of March;

(c) authorizing the Collector in any presidency-town to cause a special notice to be served on any person chargeable under Part IV., inviting him to deliver, or cause to be delivered, to the Collector, within a time specified in the notice, a return, in a prescribed form accompanying the notice, of his income computed in the manner described in clause (b) of this sub-section.

(2) A return delivered under rules made under clause (b) or clause (c) of sub-section (1) must state the period during which the income has actually accrued; and there must be added at the foot thereof a declaration that the income shown in the return is truly estimated on all the sources therein mentioned, that it has actually accrued within the period therein stated, and that the person making the return has no other source of income.

(3) When a Collector authorized in that behalf by rules made under clause (b) or clause (c) of sub-section (1) has caused a notice to be published or served under those rules, he shall not include any person to whom the notice applies in any list made under section 16, or serve a notice on him under section 17, until the time specified in the notice published or served under those rules has expired.

(4) Rules made under this section shall be published in the official Gazette.

19. Every amount specified as payable in a list or notice prepared or served under section 16 or section 17 shall be paid within the time, at the place, and to the person, mentioned in the list or notice.

Trustees, Agents, Managers, and Incapacitated Persons.

20. A person being the trustee, guardian, curator, or committee of any infant, married woman, lunatic, or idiot, and having the control of the property of the infant, married woman, lunatic, or idiot, whether the infant, married woman, lunatic, or idiot resides in British India or not, shall, if the infant, married woman, lunatic, or idiot is chargeable under Part IV., be chargeable under that Part in like manner, and to the same amount, as the infant would be chargeable

if he were of full age, or the married woman if she were sole, or the lunatic or idiot if he were capable of acting for himself.

21. Any person not resident in British India, whether a subject of Her Majesty or not, being in receipt, through an agent, of any income chargeable under Part IV., shall be chargeable under that Part in the name of the agent in the like manner, and to the like amount, as he would be chargeable if he were resident in British India, and in direct receipt of that income.

22. Receivers or managers appointed by any Court in India, the Courts of Wards, the Administrators-General of Bengal, Madras, and Bombay, and the Official Trustees, shall be chargeable under Part IV. in respect of all income officially in their possession, or under their control, which is liable to assessment under that part.

23. When a trustee, guardian, curator, committee, or agent is, as such, assessed under Part IV.,

or when a receiver or manager appointed as aforesaid, a Court of Wards, an Administrator-General, or an Official Trustee, is assessed under that Part in respect of income officially received,

the person or Court so assessed may, from time to time, out of the money coming to his or its possession as trustee, guardian, curator, committee, or agent, or as receiver, manager, Court of Wards, Administrator-General, or Official Trustee, retain so much as is sufficient to pay the amount of the assessment.

Occupying Owners.

24 (1) Where a building is occupied by its owner, it shall be deemed a source of income within the meaning of this Act, and, if liable to be assessed under this Act, shall be assessed at five-sixths of the gross annual rent at which it may reasonably be expected to let, and, in the case of a dwelling-house, may be expected to let unfurnished.

(2) "Owner," as used in this section with reference to a building, means the person who would be entitled to receive the rent of the building if the building were let to a tenant.

CHAPTER IV.

REVISION OF ASSESSMENT.

25. (1) Any person objecting to the amount at which he is assessed, or denying his liability to be assessed, under Part IV., may apply by petition to the Collector to have the assessment reduced or cancelled.

(2) The petition shall ordinarily be presented within the period specified in the notification prefixed to the list filed under section 16, or in the notice served under section 17, as the case may be. But the Collector may receive a petition after the expiration of that period if he is satisfied that the objector had sufficient cause for not presenting it within that period.

(3) The petition shall, as nearly as circumstances admit, be in the form contained in the third schedule to this Act, and the statements contained in the petition shall be verified by the petitioner or some other competent person in the manner required by law for the verification of plaints.

26. The Collector shall fix a day and place for the hearing of the petition, and on the day and at the place so fixed, or on the day and at the place, if any, to which he has adjourned the hearing, shall hear the petition, and pass such order thereon as he thinks fit.

27. Subject to the control of the Local Government, the Commissioner of the Division, on the petition of any person deeming himself aggrieved by an order under section 12, sub-section (2), or section 26, shall, if the amount of the assessment to which the petition relates is two hundred and fifty rupees or upwards, and may in his discretion, if the amount of the assessment is less than two hundred and fifty rupees, call for the record of the case, and pass such order thereon as he thinks fit.

28. The Collector or Commissioner may, for the purpose of enabling him to determine how the petitioner or the company which he represents should be assessed, summon and enforce the attendance of witnesses, and compel them to give evidence and compel the production of documents, by the same means and, as far as possible, in the same manner as is provided in the case of a Civil Court by the Code of Civil Procedure:*

* Act XIV. of 1882.

Provided that the Collector or Commissioner shall not call for any evidence except at the instance of the petitioner or in order to ascertain the correctness of facts alleged by him.

CHAPTER V.

RECOVERY OF ARREARS OF TAX.

29. The tax chargeable under this Act shall be payable at the time appointed in that behalf in or under this Act, or, if a time is not so appointed, then on the first day of June in each year.

Tax when payable.

30. (1) In any case of default under this Act, the Collector, in his discretion, may recover a sum not exceeding double the amount of the tax either as if it were an arrear of land-revenue, or by any process enforceable for the recovery of an arrear of any municipal tax or local rate imposed under any enactment for the time being in force in any part of the territories administered by the Local Government to which he is subordinate, or may pass an order that a sum not exceeding double that amount shall be recovered from the defaulter :

Mode and time of recovery.

Provided that, where a person has presented a petition under section 25, such sum shall not be recoverable from him unless, within thirty days from the passing of the order on the petition, he fails to pay the amount, if any, required by that order.

(2) The Local Government may direct by what authority any powers or duties incident under any such enactment as aforesaid to the enforcement of any process for the recovery of a municipal tax or local rate shall be exercised or performed when that process is employed under sub-section (1) for the recovery of the tax chargeable under this Act.

(3) An order passed by the Collector under sub-section (1) shall have the force of a decree of a Civil Court in a suit in which the Government is the plaintiff and the defaulter is the defendant ; and the order may be enforced in manner provided by the Code of Civil Procedure* for the enforcement of decrees for money ; and the procedure under the said Code* in respect of the following matters, namely,—

* Act XIV. of 1882.

- (a) sales in execution of decrees,
- (b) arrest in execution of decrees for money,
- (c) execution of decrees by imprisonment,
- (d) claims to attached property, and
- (e) execution of decrees out of the jurisdiction of the Courts by which they were passed,

shall apply to every execution issued for levying the sum mentioned in the order; save that all the powers and duties conferred and imposed by the said Code* upon the Court shall be exercised and discharged by the Collector by whom the order has been made, or to whom a copy thereof has been sent for execution according to the provisions of the said Code,* sections 223 and 224.

(4) The Local Government may direct, with respect to any specified area, that the tax chargeable under this Act shall be recovered therein with, and as an addition to, any municipal tax or local rate by the same person, and in the same manner, as the municipal tax or local rate is recovered.

(5) No proceedings for the recovery of any sum payable under this Act shall be commenced after the expiration of three months from the last day of the year in respect of which the sum is payable.

CHAPTER VI.

SUPPLEMENTAL PROVISIONS.

Composition.

31. (1) If a company or person desires to compound for the tax assessable under Part II. or Part IV., as the case may be, the Collector may, subject to such rules as may be prescribed in this behalf, agree with the company or person for a composition for the tax on such terms, and for such period, as he thinks fit.

(2) The agreement shall provide for the payment, in each year of the period comprised in the agreement, of the amount of the composition; and that amount shall be recoverable in the same manner, and by the same means as any other assessment made under Part II. or Part IV., as the case may be.

* Act XIV. of 1882.

Receipts.

32. When any money is paid under this Act to the Collector, or Receipts and their contents. is recovered thereunder by him, he shall give a receipt for the same, specifying—

- (a) the date of the payment or recovery of the money ;
- (b) the amount paid or recovered ;
- (c) the person who was liable to the tax, and the source or sources of income in respect of which the tax was payable ;
- (d) the year or part of the year for which the tax was payable ;
- (e) the place or places, district or districts, where the income accrues ; and
- (f) such other particulars, if any, as may be prescribed.

Amendment of Assessment.

33. If a company or person assessed under Part II. or Part Amendment of assessment. IV. ceases to carry on the trade or business in respect whereof the assessment was made, or if any such person dies or becomes insolvent before the end of the year for which the assessment was made, or if any such company or person is, from any other specific cause, deprived of or loses the income on which the assessment was made, then the company or person, or its or his representative, in interest, may apply to the Collector during or within three months after the end of the year, and the Collector, on proof to his satisfaction of any such cause as aforesaid, shall amend the assessment as the case may require, and refund such sum, if any, as has been overpaid.

Penalties.

Failure to make payments or deliver returns or statements.

34. (1) If a person fails—

- (a) to deduct and pay any tax as required by section 8, sub-section (1), or section 13, sub-section (1), or
- (b) to deliver or cause to be delivered to the Collector in due time the return or statement mentioned in section 10 or section 11, or
- (c) to produce, or cause to be produced, on or before the date mentioned in a notice under section 12, such accounts as are referred to in the notice,

he shall, on conviction before a Magistrate, be punishable with fine which may extend to ten rupees for every day during which the default continues.

(2) The Commissioner of the Division may remit wholly or in part any fine imposed under this section.

35. If a person makes a statement in a declaration mentioned in section 18, sub section (2), which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be deemed to have committed the offence described in section 177 of the Indian Penal Code.*

36. A person shall not be proceeded against for an offence under section 34 or section 35, except at the instance of the Collector.

37. Any proceeding under section 12 or Chapter IV. of this Act shall be deemed to be a "judicial proceeding" within the meaning of sections 193 and 228 of the Indian Penal Code.*

Power to make Rules.

38.† (1) The Governor-General in Council may make rules consistent with this Act for ascertaining and determining income liable to assessment, for preventing the disclosure of particulars contained in documents delivered or produced with respect to assessments under Part IV., and generally for carrying out the purposes of this Act, and may delegate to a Local Government the power to make such rules so far as regards the territories subject to that Government.

(2) In making a rule for preventing the disclosure of any particulars referred to in sub-section (1), the Governor-General in Council may direct that a public servant committing a breach of the rule shall be deemed to have committed an offence under section 166 of the Indian Penal Code.*

* Act XLV. of 1860

† As to exemption from liability to assessment, see Gazette of India, 1890, Pt. I., p. 4c8, and *ibid*, 1893, Pt. I., p. 647

(3) But a person committing any such offence shall not be liable to be prosecuted therefor without the previous sanction of the Local Government.

(4) Rules made under this section shall be published in the official Gazette.

Miscellaneous.

39. No suit shall lie in any Civil Court to set aside or modify any assessment made under this Act.
Bar of suits in Civil Court.

40. All or any of the powers and duties conferred and imposed by this Act on a Collector or on a Commissioner of Division may be exercised and performed by such other officer or person as the Local Government appoints in this behalf.
Exercise of powers of Collector and Commissioner.

41. An officer or person exercising all or any of the powers of a Collector under this Act may, by notice, require any person to furnish a list, in the prescribed form, containing, to the best of his belief,—
Obligation to furnish information respecting lodgers and employees.

(a) the name of every inmate or lodger resident in any house used by him as a dwelling-house, or let by him in lodgings;

(b) the name of every other person receiving salary or emoluments amounting to "*eighty-three rupees five annas and four pies*"† per mensem, or "*one thousand*"‡ rupees per annum, or upwards, employed in his service, whether resident in any such house as aforesaid or not; and

(c) the place of residence of such of those persons as are not resident in any such house, and of any inmate or lodger in any such house who has a place of residence elsewhere at which he is liable under this Act to be assessed and who desires to be assessed at that place.

* For notifications investing certain Political Officers with powers under this section in respect of persons residing out of British India, see Western India Volume of Macpherson's Lists of British Enactments in force in Native States, Ed 1895, p 18

† These words have been substituted for the original words "*forty-one rupees ten annas and eight pies*" by Act XI. of 1903, s 2 (2).

‡ These have been substituted for the original words "*five hundred,*" *ibid.*

42. An officer or person exercising all or any of the powers Trustees and agents to aforesaid may, by notice, require any furnish information as to person whom he has reason to believe to beneficiaries and principals. be a trustee, guardian, curator, committee, or agent, to deliver or cause to be delivered a statement of the names of the persons for or of whom he is trustee, guardian, curator, committee, or agent.

43. An officer or person exercising all or any of the said Trustees, &c., to furnish powers may, by notice, require a trustee, information as to income. guardian, curator, committee, or agent, or a receiver or manager appointed by any Court in India, or a Court of Wards, Administrator-General, or Official Trustee, to furnish such returns of income liable to assessment under Part IV. as may be prescribed.

44. An officer or person exercising all or any of the said Obligation to furnish other powers may, at the instance of any person information. person respecting whose assessment or the amount thereof any doubt exists, require any person to furnish such information as he deems to be necessary for the purpose of ascertaining facts relevant to the assessment or its amount.

45. A person required to furnish any information under section Sections 176 and 177 of section 41, section 42, section 43, or section 44, shall be legally bound to furnish the same in such manner and within such time as may be specified in the requisition for the information.

46. (1) A notice under this Act may be served on the person therein named either by a prepaid letter addressed to the person and registered under Part III. of the Indian Post Office Act, 1866,* or by the delivery or tender to him of a copy of the notice.

(2) If a notice is served by registered letter, it shall be presumed to have been served at the time when the letter would be delivered in the ordinary course of post, and proof that the letter was properly addressed and put into the post shall be sufficient to raise the presumption that the notice was duly served at that time.

(3) If the notice is to be served otherwise than by registered letter, the service shall, whenever it may be practicable, be on the

* Act XIV. of 1866 But see now the Indian Post Office Act (VI. of 1898).

person named in the notice, or, in the case of a firm, on some member thereof, or, in the case of a Hindu undivided family, on the manager of the joint estate of the family.

(4) But when the person, member, or manager cannot be found, the service may be made on any adult male member of his family residing with him; and if no such adult male-member can be found, the serving-officer shall fix the copy of the notice on the outer door of the house in which the person, firm, or family therein named ordinarily resides or carries on business.

47. (1) When a company or firm has several places of business in territories subject to different Local Governments, the Governor-General in Council may declare which of those places shall, for the purposes of this Act, be deemed to be the principal place of business.

(2) When a company or firm has several places of business in the territories subject to a single Local Government, that Government may declare which of them shall, for the purposes of this Act, be deemed to be the principal place of business.

(3) When a person has several places of residence in territories subject to different Local Governments, the Governor General in Council may declare which of those places shall, for the purposes of this Act, be deemed to be his residence.

(4) When a person has several places of residence in the territories subject to a single Local Government, that Government may declare which of those places shall, for the purposes of this Act, be deemed to be his residence.

(5) The powers given by this section may be delegated to, and exercised by, such officers as the Governor-General in Council or the Local Government, as the case may be, appoints in this behalf.

48. Where a person is in respect of any period liable to the tax under this Act, he shall not in respect of that period be assessed† to the capitation-tax, or the land-rate in lieu thereof, levied in Lower Burma* under the Burma Land and Revenue Act, 1876 ‡

* This reference to British Burma should now be read as referring to Lower Burma. See the Upper Burma Laws Act (XX of 1886), s 4

† Here certain words repealed by Act VI. of 1902, have been omitted.

‡ Act II. of 1876.

49. Every person deducting, retaining, or paying any tax in pursuance of this Act or of any arrangement under section 9, sub-section (a), in respect of income belonging to another person, is hereby indemnified for the deduction, retention, or payment thereof.

50. All powers conferred by, or conferable under, this Act may be exercised from time to time as occasion requires.

THE FIRST SCHEDULE.

ENACTMENTS REPEALED.

(See section 2)

ACTS OF THE GOVERNOR-GENERAL IN COUNCIL.

Number and year.	Short title.	Extent of repeal
Act No. II. of 1878	The Northern India License Act, 1878	So much as has not been repealed.
Act No. VI. of 1880	The Indian License Acts Amendment Act, 1880.	The whole

ACTS OF THE GOVERNOR OF FORT ST. GEORGE IN COUNCIL.

Number and year.	Short title	Extent of repeal.
Act No III of 1878.	The Madras License Act, 1878.	So much as has not been repealed.
Act No. III. of 1880	An Act to amend Madras Act III. of 1878 as amended by Act VI of 1880	The whole.

THE FIRST SCHEDULE—*concluded.*

ACT OF THE GOVERNOR OF BOMBAY IN COUNCIL.

Number and year.	Short title.	Extent of repeal.
Act No. III. of 1878.	The Bombay License Act, 1878.	So much as has not been repealed.

ACT OF THE LIEUTENANT-GOVERNOR OF BENGAL IN COUNCIL.

Number and year.	Short title.	Extent of repeal.
Act No. II. of 1880.	The Bengal License Act, 1880.	The whole.

THE SECOND SCHEDULE.

SOURCES OF INCOME AND RATES OF TAX.

(See section 4.)

FIRST COLUMN.	SECOND COLUMN.
Source of Income.	Rate of Tax.

PART I.

SALARIES AND PENSIONS.

1. Any salary, annuity, pension, or gratuity paid in British India to or on behalf of any person residing in British India or serving on board a ship plying to or from British Indian ports, whether on account of himself or another person.

2. Any salary, annuity, pension, or gratuity paid by the Government, or by a local authority established in the exercise of the powers of the Governor-General in Council in that behalf, to or on behalf of a British subject within the dominions of a Prince or State in India in alliance with Her Majesty.

(a) If the income amounts to Rs. 2,000 per annum, or Rs. 166-10-8 per mensem, or upwards—five pies in the rupee.

(b) If the income is less than Rs. 2,000 per annum, or Rs. 166-10-8 per mensem—four pies in the rupee.

THE SECOND SCHEDULE—*continued.*

FIRST COLUMN.	SECOND COLUMN.
Source of Income.	Rate of Tax.

PART II.

PROFITS OF COMPANIES.

Profits of a company

...

Five pies in the rupee on the whole of the nett profits made in British India by the company during the year ending on the day on which the company's accounts have been last made up, or, if the company's accounts have not been made up within the year ending on the thirty-first day of March in the year immediately preceding that for which the assessment is to be made, then on the whole of the nett profits so made during the year ending on the said thirty-first day of March.

THE SECOND SCHEDULE—*continued*.

FIRST COLUMN.	SECOND COLUMN.
Source of Income.	Rate of Tax.

PART III.

INTEREST ON SECURITIES.

Interest becoming due on or after the first day of April 1886, and payable in British India, on—

(a) promissory notes, debentures, stock, or other securities of the Government of India (including securities of the Government of India whereon interest is payable out of British India by draft on any place in British India), or

(b) [*Repealed by Act XII. of 1891, Sch. I.*]

(c) debentures or other securities for money issued by or on behalf of a local authority or company.

Five pies in the rupee on such interest, unless the owner of the security produces a certificate signed by the Collector that his annual income from all sources is less than Rs. 1,000* in which case no deduction shall be made from the interest, or unless he produces a like certificate that his income from all sources is less than Rs. 2,000, in which case the rate shall be four pies in the rupee.

* These figures have been substituted for the original figures "500" by Act XI. of 1903, s. 2 (3).

THE SECOND SCHEDULE—*concluded*.

PART IV.

OTHER SOURCES OF INCOME.

FIRST COLUMN.	SECOND COLUMN.
Source of Income.	Rate of Tax.
Any source of income not included in Part I., Part II., or Part III. of this schedule.	<p>“(a)* If the annual income is assessed at—</p> <p>not less than Rs. 1,000 but less than Rs. 1,250, the tax shall be Rs. 20.</p> <p>not less than Rs. 1,250 but less than Rs. 1,500, the tax shall be Rs. 28.</p> <p>not less than Rs. 1,500 but less than Rs. 1,750, the tax shall be Rs. 35.</p> <p>not less than Rs. 1,750 but less than Rs. 2,000, the tax shall be Rs. 42.”</p> <p>(b) If the annual income is assessed at Rs. 2,000, or upwards—five pices in the rupee on the income.</p>

* This sub-head (a) has been substituted for the original by Act XI. of 1903, s. 2 (4).

THE THIRD SCHEDULE.

FORM OF PETITION.

(See section 25.)

TO THE COLLECTOR OF

The day of 18 .

The petition of A. B. of

SHEWETH as follows—

1.—Under Act No. II. of 1886, your petitioner has been assessed in the sum of rupees for the year commencing the first day of April 18 .

2.—Your petitioner's income and profits accruing and arising from *[here specify petitioner's trade or other source or sources of income or profits, and the place or places at which such income or profits accrues or arise]* for the year ending the day of last were rupees [as will appear from the documents of which a list is presented herewith*].

3.—Such income and profits actually accrued and arose during a period of months and days *[here state the exact number of months and days in which the income and profits accrued and arose]*.

4.—During the said year your petitioner had no other income or profits.

Your petitioner therefore prays that he may be assessed accordingly *[or that he may be declared not to be chargeable under the said Act]*.

(Signed) A. B.

Form of Verification.

I, A. B., the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief

(Signed) A. B.

* These words are to be inserted if the petitioner relies on documents. The list, if the petitioner so wishes, may be presented in a sealed envelope

ACT XXXII. OF 1839

(The Interest Act, 1839).*

PASSED ON THE 30TH DECEMBER 1839.

An Act concerning the Allowance of Interest in certain cases.

1. WHEREAS it is expedient to extend to the territories under the government of the East India Company, as well within the jurisdiction of Her Majesty's Courts as elsewhere, the provisions of the Statute

* This short title has been given by the Indian Short Titles Act (XIV. of 1897)

This Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3

It has been declared in force in the Arakan Hill District by the Arakan Hill District Laws Regulation (IX of 1874), s. 1

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts, namely:—

(1) Sindh—*See Gazette of India*, 1880, Pt. I., p. 672 :

(2) West Jalpaiguri, the Western Dvars (namely, that portion of the Jalpaiguri Division known as the Western Dvars, that is the country lying between the Tista and Sunkos Rivers in the Jalpaiguri District), the Western Hills of Darjiling (that is, the Hills west of the Tista River in the District of Darjiling), the Darjiling Tarai, and the Damsun Sub-division of the District of Darjiling—*See Gazette of India*, 1881, Pt. I., p. 74

(3) The District of Hazaribagh—*See Gazette of India*, 1881, Pt. I., p. 507.

(4) The District of Lohardaga.—*See Gazette of India*, 1881, Pt. I., p. 508.

(5) The District of Manbhum—*See Gazette of India*, 1881, Pt. I., p. 509.

(6) The Pargana of Dhalbhum in the District of Singhbhum—*See Gazette of India*, 1881, Pt. I., p. 510

(7) The scheduled portion of the Mirzapur District—*See Gazette of India*, 1879, Pt. I., p. 383.

3rd and 4th William IV., Chapter 42,* section 28, concerning the allowance of interest in certain cases :

It is, therefore, hereby enacted that, upon all debts or sums Power of Court to allow certain payable at a certain time, or interest. otherwise, the Court before which such debts or sums may be recovered may, if it shall think fit, allow interest to the creditor at a rate not exceeding the current rate of interest from the time when such debts or sums certain were payable if such debts or sums be payable by virtue of some written instrument at a certain time ; or, if payable otherwise then from the time when demand of payment shall have been made in writing so as such demand shall give notice to the debtor that interest will be claimed from the date of such demand until the term of payment : provided that interest shall be payable in all cases in which it is now payable by law.

(8) Jaunsar Bawar—*See Gazette of India*, 1879 Pt. I, p. 382.

(9) The Scheduled Districts of the Central Provinces.—*See Gazette of India*, 1879, Pt. I., p. 771 :

(10) The Districts of Hazara, Peshawar, Kohat, Bannu Dera Ismail Khan, and Dera Ghazi Khan—*See Gazette of India*, 1886, Pt. I, p. 48 :

(11) The District of Lahaul—*See Gazette of India*, 1886, Pt. I., p. 301 :

(12) The Districts of Kamrup, Naugong Darrang, Sibsagar, Lakhimpur, Goalpara (excluding the Eastern Dvars), and Cachar (excluding the North Cachar Hills).—*See Gazette of India*, 1878, Pt. I, p. 513

(13) The District of Sylhet.—*See Gazette of India*, 1879, Pt. I., p. 631 :

(14) The Garo Hills, the Khasi and Jaintia Hills the Naga Hills, the North Cachar Hills in the Cachar District and the Eastern Dvars in the Goalpara District—*See Gazette of India*, 1897, Pt. I, p. 299

It has been extended, by notification under s 5 of the last-mentioned Act, to the following Scheduled Districts, namely—

(1) Kumaon and Garhwal—*See Gazette of India*, 1876, Pt. I, p. 606 :

(2) The North-Western Provinces Tarai—*See Gazette of India*, 1876, Pt. I., p. 505

* Short title—"The Civil Procedure Act, 1833"—*See the Short Titles Act*, 1896 (Stat. 59 & 60 Vict., c. 14)

ACT XVIII. OF 1850:

The Judicial Officers' Protection Act, 1850.*

PASSED ON THE 4TH APRIL 1850.

An Act for the Protection of Judicial Officers.

For the greater protection of Magistrates and others
Preamble. acting judicially, it is enacted as follows:—

* Act XVIII of 1850 has been declared to be in force in the whole of British India except as regards the Scheduled Districts by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared in force in Upper Burma generally (except the Shan States) by the Upper Burma Laws Act (XX. of 1886); in Angul and the Khondmals by the Angul District Regulation (I of 1894), s. 3; in the Arakan Hill District by the Arakan Hill District Laws Regulation (IX. of 1874), s. 3; in British Baluchistan by the British Baluchistan Laws Regulation (I of 1890), s. 3; and in the Santhal Parganas by the Santhal Parganas Settlement Regulation (III of 1874), s. 3, as amended by the Santhal Parganas Laws Regulation (III. of 1886).

It has also been declared, by notification under s. 3 (a) of the Scheduled Districts Act (XIV of 1874), to be in force in the following Scheduled Districts, namely —

- (1) The Taluqs of Bhadrachalam, Rakapilli, and the Rampa Country (see *Gazette of India*, 1879, Pt. I, p. 630);
- (2) The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singbhum (see *Gazette of India*, 1881, Pt. I, p. 504);
- (3) Sindh (see *Gazette of India*, 1878, Pt. I, p. 482);
- (4) West Jalpaiguri, the Western Hills of Darjiling, the Darjiling Tarai, and the Damson Sub-division of the Darjiling District (see *Gazette of India*, 1881, Pt. I, p. 74);
- (5) Kumaon and Garhwal (see *Gazette of India*, 1876, Pt. I, p. 605);
- (6) The Scheduled Portion of the Mirzapur District (see *Gazette of India*, 1879, Pt. I, p. 383);
- (7) Jaunsar Bawar (see *Gazette of India*, 1879, Pt. I, p. 382);
- (8) The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, and Dera Ghazi Khan (see *Gazette of India*, 1886, Pt. I, p. 48).

1. No Judge, Magistrate, Justice of the Peace, Collector, or

other person acting judicially, shall be liable to be sued in any Civil Court for any act done or ordered to be done by him in the discharge of his judicial duty,* whether or not within the limits of his jurisdiction: Provided that he at the time, in good faith,† believed himself to have jurisdiction to do or order the act complained of; and no officer or any Court or other person bound to execute the lawful warrants or orders of any such Judge, Magistrate, Justice of the Peace, Collector, or other person acting judicially shall be liable to be sued in any Civil Court for the execution of any warrant or order which he would be bound to execute if within the jurisdiction of the person issuing the same.

(9) The District of Lahaul (see *Gazette of India*, 1886, Pt. I, p. 301):

(10) The Scheduled Districts of the Central Provinces (see *Gazette of India*, 1879, Pt. I, p. 771):

(11) Coorg (see *Gazette of India*, 1879, Pt. I, p. 747):

(12) The District of Sylhet (see *Gazette of India*, 1879, Pt. I, p. 631)

(13) The Districts of Kamrup, Naugong, Darrang, Sibsagar, Lakhimpur, Goalpara (excluding the Eastern Dvars), and Cachar (excluding the North Cachar Hills) (see *Gazette of India*, 1878, Pt. I, p. 533):

(14) The Garo Hills, the Khasi and Jaintia Hills, the Naga Hills, the North Cachar Hills in the Cachar District, and the Eastern Dvars in the Goalpara District (see *Gazette of India*, 1897 Pt. I, p. 299):

(15) The Porahat Estate in the Singbhum District (see *Gazette of India*, 1897, Pt. I, p. 1059)

It has been extended, by notification under s 5 of the last-mentioned Act, to the following Scheduled Districts, namely:—

(1) The North-Western Provinces Tarai (see *Gazette of India*, 1876, Pt. I, p. 505)

(2) Ajmere and Merwara (see *Gazette of India*, 1879, Pt. I, p. 380)

It has been extended to the Shan States generally by the Second Schedule to the Shan States Law and Criminal Justice Order, 1895 (see *Burma Gazette*, 1895, Pt. I, p. 262)

It has been applied to the Chin Hills, as regards hill tribes, by the Chin Hills Regulation (V of 1896), and to the Baluchistan Agency Territories by the Baluchistan Agency Laws Law 1890, s 4 (1)

* As to procedure for instituting criminal prosecutions against Judges and public servants see the Code of Criminal Procedure (Act V of 1898), s. 197 See also 3 Bom A C J 47.

† See 1 Taylor & Bell 228 n, 6 Mad. 439, 3 Bom. A C J 46 4 Ben. A. C. J. 37.

ACT I. OF 1894.

The Land Acquisition Act.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

Received the assent of the Governor-General on the 2nd February 1894.

An Act to amend the Law for the Acquisition of Land for Public Purposes and for Companies.

WHEREAS it is expedient to amend the law for the acquisition of land needed for public purposes and for companies, and for determining the amount of compensation to be made on account of such acquisition ; It is hereby enacted as follows :—

PART I.

PRELIMINARY.

Short title, extent, and commencement.

1. (1) This Act may be called "The Land Acquisition Act, 1894."

(2) It extends to the whole of British India , and

(3) It shall come into force on the first day of March 1894.

Repeal.

2. (1) The Land Acquisition Act, 1870, and section 74 of the Punjab Courts Act, 1884, are hereby repealed.

(2) But all proceedings commenced, officers appointed or authorized, agreements published, and rules made, under the said Land Acquisition Act, shall, as far as may be, be deemed to have been respectively commenced, appointed or authorized, published, and made under this Act.

(3) Any enactment or document referring to the said Land Acquisition Act, or to any enactment thereby repealed, shall, so far as may be, be construed to refer to this Act, or to the corresponding portion thereof.

Definitions.

3. In this Act, unless there is something repugnant in the subject or context,—

- (a) the expression "land" includes benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth:
- (b) the expression "person interested" includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land:
- (c) the expression "Collector" means the Collector of a district, and includes a Deputy Commissioner and any officer specially appointed by the Local Government to perform the functions of a Collector under this Act:
- (d) the expression "Court" means a principal Civil Court of original jurisdiction, unless the Local Government has appointed (as it is hereby empowered to do) a special judicial officer within any specified local limits to perform the functions of the Court under this Act:
- (e) the expression "company" means a company registered under the Indian Companies Act, 1852, or under the (English) Companies Acts, 1862 to 1890, or incorporated by an Act of Parliament or of the Governor-General in Council, or by Royal Charter or Letters Patent:
- (f) the expression "public purpose" includes the provision of village-sites in districts in which the Local Government shall have declared, by notification in the official Gazette, that it is customary for the Government to make such provision: and
- (g) the following persons shall be deemed persons "entitled to act" as and to the extent hereinafter provided (that is to say):—

trustees for other persons beneficially interested shall be deemed the persons entitled to act with reference to any such case, and that to the same extent as the persons beneficially interested could have acted if free from disability:

a married woman, in cases to which the English law is applicable, shall be deemed the person so entitled to act, and, whether of full age or not, to the same extent as if she were unmarried and of full age; and

the guardians of minors and the committees or managers of lunatics or idiots shall be deemed respectively the persons so entitled to act, to the same extent as the minors, lunatics, or idiots themselves, if free from disability, could have acted:

Provided that—

- (i) no person shall be deemed "entitled to act" whose interest in the subject-matter shall be shown, to the satisfaction of the Collector or Court, to be adverse to the interest of the person interested for whom he would otherwise be entitled to act;
- (ii) in every such case the person interested may appear by a next friend, or, in default of his appearance by a next friend, the Collector or Court, as the case may be, shall appoint a guardian for the case to act on his behalf in the conduct thereof,
- (iii) the provisions of Chapter XXXI. of the Code of Civil Procedure shall, *mutatis mutandis*, apply in the case of persons interested appearing before a Collector or Court by a next friend, or by a guardian for the case, in proceedings under this Act; and
- (iv) no person "entitled to act" shall be competent to receive the compensation-money payable to the person for whom he is entitled to act, unless he would have been competent to alienate the land, and receive and give a good discharge for the purchase-money on a voluntary sale.

PART II.

ACQUISITION.

Preliminary Investigation.

4. (1) Whenever it appears to the Local Government that land in any locality is likely to be needed for any public purpose, a notification to that effect shall be published in the
- Publication of preliminary notification, and powers of officers thereupon.

official Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.

(a) Thereupon it shall be lawful for any officer, either generally or specially authorized by such Government in this behalf, and for his servants and workmen,—

to enter upon and survey and take levels of any land in such locality;

to dig or bore into the subsoil;

to do all other acts necessary to ascertain whether the land is adapted for such purpose;

to set out the boundaries of the land proposed to be taken, and the intended line of the work (if any) proposed to be made thereon;

to mark such levels, boundaries, and line, by placing marks and cutting trenches;

and, where otherwise the survey cannot be completed, and the levels taken, and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence, or jungle:

Provided that no person shall enter into any building, or upon any enclosed Court or garden attached to a dwelling-house (unless with the consent of the occupier thereof), without previously giving such occupier at least seven days' notice in writing of his intention to do so.

5. The officer so authorized shall, at the time of such entry, pay or tender payment for all necessary damage to be done as aforesaid; and, in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector or other chief revenue-officer of the district, and such decision shall be final.

Declaration of Intended Acquisition.

6 (1) Subject to the provisions of Part VII of this Act, when-
 Declaration that land is re- ever it appears to the Local Government
 quired for a public purpose. that any particular land is needed for a
 public purpose, or for a company, a declaration shall be made to
 that effect under the signature of a Secretary to such Government,
 or of some officer duly authorized to certify its orders:

Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

(2) The declaration shall be published in the official Gazette, and shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a company, as the case may be; and, after making such declaration, the Local Government may acquire the land in manner hereinafter appearing.

7. Whenever any land shall have been so declared to be needed for a public purpose or for a company, the Local Government, or some officer authorized by the Local Government in this behalf, shall direct the Collector to take order for the acquisition of the land.

8. The Collector shall thereupon cause the land (unless it has been already marked out under section 4) to be marked out. He shall also cause it to be measured, and (if no plan has been made thereof) a plan to be made of the same.

9. (1) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.

(2) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear, personally or by agent, before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, and their objections (if any) to the measurements made under section 8. The Collector may in any case require such statement to be made in writing, and signed by the party or his agent.

(3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land, and on all such persons known

or believed to be interested therein, or to be entitled to act for persons so interested, as reside, or have agents authorized to receive service on their behalf, within the revenue-district in which the land is situate.

(4) In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by post in a letter addressed to him at his last-known residence, address, or place of business, and registered under Part III. of the Indian Post Office Act, 1866.

10. (1) The Collector may also require any such person to

Power to require and enforce the making of statements as to names and interests.

make or deliver to him, at a time and place mentioned (such time not being earlier than fifteen days after the date of the requisition) a statement containing, so far as may be practicable, the name of every other person possessing any interest in the land or any part thereof as co-proprietor, sub-proprietor, mortgagee, tenant, or otherwise, and of the nature of such interest, and of the rents and profits (if any) received or receivable on account thereof for three years next preceding the date of the statement.

(2) Every person required to make or deliver a statement under this section or section 9 shall be deemed to be legally bound to do so within the meaning of sections 175 and 176 of the Indian Penal Code.

Enquiry into Measurements, Value, and Claims, and Award by the Collector.

11. On the day so fixed, or on any other day to which the Enquiry and award by Collector. enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any), which any person interested has stated pursuant to a notice given under section 9, to the measurements made under section 8, and into the value of the land, and into the respective interests of the persons claiming the compensation, and shall make an award under his hand of—

(i) the true area of the land;

(ii) the compensation which, in his opinion, should be allowed for the land; and

(iii) the apportionment of the said compensation among all the persons known or believed to be interested in the

land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him.

12. (1) Such award shall be filed in the Collector's office, and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the apportionment of the compensation among the persons interested.

(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally, or by their representatives when the award is made.

13. The Collector may, for any cause he thinks fit, from time to time, adjourn the enquiry to a day to be fixed by him.

14. For the purpose of enquiries under this Act, the Collector shall have power to summon and enforce the attendance of witnesses, including the parties interested or any of them, and to compel the production of documents by the same means, and (so far as may be) in the same manner, as is provided in the case of a Civil Court under the Code of Civil Procedure.

15. In determining the amount of compensation, the Collector shall be guided by the provisions contained in sections 23 and 24.

Taking Possession.

16. When the Collector has made an award under section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances.

17. (1) In cases of urgency, whenever the Local Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub-section 1, take possession of any waste or arable land needed for public purposes, or for a company.

Such land shall thereupon vest absolutely in the Government, free from all encumbrances.

(2) Whenever, owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway Administration to acquire the immediate possession of any land for the maintenance of their traffic, or for the purpose of making thereon a riverside or ghât station, or of providing convenient connection with, or access to, any such station, the Collector may, immediately after the publication of the notice mentioned in sub-section 1, and with the previous sanction of the Local Government, enter upon, and take possession of, such land, which shall thereupon vest absolutely in the Government, free from all encumbrances:

Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours' notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his moveable property from such building without unnecessary inconvenience.

(3) In every case under either of the preceding sub-sections the Collector shall, at the time of taking possession, offer to the persons interested compensation for the standing crops and trees (if any) on such land, and for any other damage sustained by them caused by such sudden dispossession, and not excepted in section 24; and, in case such offer is not accepted, the value of such crops and trees and the amount of such other damage shall be allowed in awarding compensation for the land under the provisions herein contained.

PART III.

REFERENCE TO COURT AND PROCEDURE THEREON.

18. (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made,—

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award :

(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, subsection 2, or within six months from the date of the Collector's award, whichever period shall first expire.

19. (1) In making the reference, the Collector shall state, Collector's statement to the for the information of the Court, in Court. writing under his hand,—

(a) the situation and extent of the land, with particulars of any trees, buildings, or standing crops thereon ;

(b) the names of the persons whom he has reason to think interested in such land ;

(c) the amount awarded for damages, and paid or tendered under sections 5 and 17, or either of them, and the amount of compensation awarded under section 11 ; and,

(d) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined.

(2) To the said statement shall be attached a schedule giving the particulars of the notices served upon, and of the statements in writing made or delivered by, the parties interested, respectively.

20. The Court shall thereupon cause a notice, specifying the day on which the Court will proceed to determine the objection, and directing their appearance before the Court on that day, to be served on the following persons, namely :—

Service of notice.

(a) the applicant ;

(b) all persons interested in the objection, except such (if any) of them as have consented without protest to receive payment of the compensation awarded ; and,

(c) if the objection is in regard to the area of the land or to the amount of the compensation, the Collector.

21. The scope of the inquiry in every such proceeding shall be restricted to a consideration of the interests of the persons affected by the objection.

22 Every such proceeding shall take place in open Court, and all persons entitled to practice in any Court. Proceedings to be in open Court. Civil Court in the province shall be entitled to appear, plead, and act (as the case may be) in such proceeding.

23. (1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration—

first, the market-value of the land at the date of the publication of the declaration relating thereto under section 6;

secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;

thirdly, the damage (if any) sustained by the person interested at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;

fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, moveable or immovable, in any other manner, or his earnings;

fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and

sixthly, the damage (if any) *bona fide* resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land.

(2) In addition to the market-value of the land as above provided, the Court shall, in every case, award a sum of fifteen per centum on such market-value, in consideration of the compulsory nature of the acquisition.

Matters to be neglected in determining compensation. **24.** But the Court shall not take into consideration,—

First, the degree of urgency which has led to the acquisition ;

secondly, any disinclination of the person interested to part with the land acquired ;

thirdly, any damage sustained by him which, if caused by a private person, would not render such person liable to a suit ;

fourthly, any damage which is likely to be caused to the land acquired after the date of the publication of the declaration under section 6, by or in consequence of the use to which it will be put ;

fifthly, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired ;

sixthly, any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put ; or,

seventhly, any outlay or improvements on, or disposal of, the land acquired, commenced, made, or effected without the sanction of the Collector after the date of the publication of the declaration under section 6.

25. (1) When the applicant has made a claim to compensation, Rules as to amount of compensation. pursuant to any notice given under section 9, the amount awarded to him by the Court shall not exceed the amount so claimed, or be less than the amount awarded by the Collector under section 11.

(2) When the applicant has refused to make such claim, or has omitted, without sufficient reason (to be allowed by the Judge), to make such claim, the amount awarded by the Court shall in no case exceed the amount awarded by the Collector.

(3) When the applicant has omitted, for a sufficient reason (to be allowed by the Judge), to make such claim, the amount awarded

to him by the Court shall not be less than, and may exceed, the amount awarded by the Collector.

26. Every award under this Part shall be in writing signed by the Judge, and shall specify the amount awarded under clause *first* of sub-section 1 of section 23, and also the amounts (if any) respectively awarded under each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts.

Form of awards.

27. (1) Every such award shall also state the amount of costs incurred in the proceedings under this Part, and by what persons and in what proportions, they are to be paid.

Costs.

(2) When the award of the Collector is not upheld, the costs shall ordinarily be paid by the Collector, unless the Court shall be of opinion that the claim of the applicant was, so extravagant, or that he was so negligent in putting his case before the Collector that some deduction from his costs should be made, or that he should pay a part of the Collector's costs.

28. If the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of six per centum per annum from the date on which he took possession of the land to the date of payment of such excess into Court.

Collector may be directed to pay interest on excess compensation.

PART IV.

APPORTIONMENT OF COMPENSATION.

29. Where there are several persons interested, if such persons agree in the apportionment of the compensation, the particulars of such apportionment shall be specified in the award, and, as between such persons, the award shall be conclusive evidence of the correctness of the apportionment.

30. When the amount of compensation has been settled under section 11, if any dispute arises as to the apportionment of the same or any part

Dispute as to apportionment.

thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of the Court.

PART V.

PAYMENT.

31. (1) On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation, or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under section 18 would be submitted :

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount :

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18 :

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto

(3) Notwithstanding anything in this section, the Collector may, with the sanction of the Local Government, instead of awarding a money-compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land-revenue on other lands held under the same title, or in such other way as may be equitable, having regard to the interests of the parties concerned.

(4) Nothing in the last foregoing sub-section shall be construed to interfere with, or limit the power of, the Collector to enter into any arrangement with any person interested in the land, and competent to contract in respect thereof.

32. (1) If any money shall be deposited in Court under sub-section 2 of the last preceding section, and it appears that the land in respect whereof the same was awarded belonged to any person who had no power to alienate the same, the Court shall—

- (a) order the money to be invested in the purchase of other lands to be held under the like title and conditions of ownership as the land in respect of which such money shall have been deposited was held, or
- (b) if such purchase cannot be effected forthwith, then in such Government or other approved securities as the Court shall think fit ;

and shall direct the payment of the interest or other proceeds arising from such investment to the person or persons who would, for the time being, have been entitled to the possession of the said land, and such moneys shall remain so deposited and invested until the same be applied—

- (1) in the purchase of such other lands as aforesaid ; or
- (ii) in payment to any person or persons becoming absolutely entitled thereto.

(2) In all cases of moneys deposited to which this section applies, the Court shall order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the Collector, namely :—

- (a) the costs of such investments as aforesaid ;
- (b) the costs of the orders for the payment of the interest or other proceeds of the securities upon which such moneys are for the time being invested, and for the payment out of Court of the principal of such moneys and of all proceedings relating thereto, except such as may be occasioned by litigation between adverse claimants.

33. When any money shall have been deposited in Court under this Act for any cause other than that mentioned in the last preceding section, the Court may, on the application of any party interested or claiming an interest in such money, order the same to be invested in such Government or other approved securities as it may think proper, and may direct the interest or other proceeds of any

such investment to be accumulated and paid in such manner as it may consider will give the parties interested therein, the same benefit therefrom as they might have had from the land in respect whereof such money shall have been deposited, or as near thereto as may be.

34. When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of 6 per centum per annum from the time of so taking possession until it shall have been so paid or deposited.

Payment of interest.

PART VI.

TEMPORARY OCCUPATION OF LAND.

35. (1) Subject to the provisions of Part VII. of this Act, whenever it appears to the Local Government that the temporary occupation and use of any waste or arable land are needed for any public purpose, or for a company, the Local Government may direct the Collector to procure the occupation and use of the same for such term as it shall think fit, not exceeding three years from the commencement of such occupation.

(2) The Collector shall thereupon give notice in writing to the persons interested in such land of the purpose for which the same is needed, and shall, for the occupation and use thereof for such term as aforesaid, and for the materials (if any) to be taken therefrom, pay to them such compensation, either in a gross sum of money, or by monthly or other periodical payments, as shall be agreed upon in writing between him and such persons respectively.

(3) In case the Collector and the persons interested differ as to the sufficiency of the compensation or apportionment thereof, the Collector shall refer such difference to the decision of the Court.

Power to enter and take possession, and compensation on restoration.

36. (1) On payment of such compensation, or on executing such agreement, or on making a reference under section 35,

the Collector may enter upon and take possession of the land, and use or permit the use thereof in accordance with the terms of the said notice.

(2) On the expiration of the term, the Collector shall make or tender to the persons interested compensation for the damage (if any) done to the land, and not provided for by the agreement, and shall restore the land to the persons interested therein :

Provided that, if the land has become permanently unfit to be used for the purpose for which it was used immediately before the commencement of such term, and if the persons interested shall so require, the Local Government shall proceed under this Act to acquire the land as if it was needed permanently for a public purpose, or for a company.

37. In case the Collector and persons interested differ as to Difference as to condition the condition of the land at the expiration of land. tion of the term, or as to any matter connected with the said agreement, the Collector shall refer such difference to the decision of the Court.

PART VII.

ACQUISITION OF LAND FOR COMPANIES.

38. (1) Subject to such rules as the Governor-General of India in Council may, from time to time, prescribe in this behalf, the Local Government may authorize any officer of any company desiring to acquire land for its purposes to exercise the powers conferred by section 4.

(2) In every such case section 4 shall be construed as if, for the words, "for such purpose," the words, "for the purposes of the company," were substituted ; and section 5 shall be construed as if, after the words, "the officer," the words, "of the company," were inserted.

39. The provisions of sections 6 to 37 (both inclusive) shall not be put in force in order to acquire land for any company, unless with the previous consent of the Local Government, nor unless the company shall have executed the agreement hereinafter mentioned.

40. (1) Such consent shall not be given, unless the Local Government be satisfied, by an enquiry held as hereinafter provided,—

Previous enquiry.

(a) that such acquisition is needed for the construction of some work, and

(b) that such work is likely to prove useful to the public.

(2) Such enquiry shall be held by such officer, and at such time and place, as the Local Government shall appoint.

(3) Such officer may summon and enforce the attendance of witnesses, and compel the production of documents by the same means, and, as far as possible, in the same manner, as is provided by the Code of Civil Procedure in the case of a Civil Court.

41. Such officer shall report to the Local Government the result of the enquiry, and, if the Local Government is satisfied that the proposed acquisition is needed for the construction of a work, and that such work is likely to prove useful to the public, it shall, subject to such rules as the Governor-General of India in Council may, from time to time, prescribe in this behalf, require the company to enter into an agreement with the Secretary of State for India in Council, providing, to the satisfaction of the Local Government, for the following matters, namely:—

(1) the payment to Government of the cost of the acquisition;

(2) the transfer, on such payment, of the land to the company;

(3) the terms on which the land shall be held by the company;

(4) the time within which, and the conditions on which, the work shall be executed and maintained; and

(5) the terms on which the public shall be entitled to use the work.

42. Every such agreement shall, as soon as may be, after its execution, be published in the *Gazette of India*, and also in the local official *Gazette*, and shall thereupon (so far as regards the terms on which the public shall be entitled to use the work) have the same effect as if it had formed part of this Act.

Publication of agreement.

43. The provisions of sections 39 to 42, both inclusive, shall not apply, and the corresponding sections of the Land Acquisition Act, 1870, shall be deemed never to have applied, to the acquisition of land for any railway or other company, for the purposes of which, under any agreement between such company and the Secretary of State for India in Council, the Government is or was bound to provide land.

44. In the case of the acquisition of land for the purposes of a railway company, the existence of such an agreement as is mentioned in section 43 may be proved by the production of a printed copy thereof purporting to be printed by order of Government.

PART VIII.

MISCELLANEOUS.

45. (1) Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed, in the case of a notice under section 4, by the officer therein mentioned, and, in the case of any other notice, by or by order of the Collector or the Judge

(2) Whenever it may be practicable, the service of the notice shall be made on the person therein named.

(3) When such person cannot be found, the service may be made on any adult male member of his family residing with him; and if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business, or by fixing a copy thereof in some conspicuous place in the office of the officer aforesaid or of the Collector, or in the Court-house, and also in some conspicuous part of the land to be acquired :

Provided that, if the Collector or Judge shall so direct, a notice may be sent by post, in a letter addressed to the person named therein at his last-known residence, address, or place of business, and registered under Part III. of the Indian Post Office Act, 1866, and service of it may be proved by the production of the addressee's receipt.

46. Whoever wilfully obstructs any person in doing any of the acts authorized by section 4 or section 8, or wilfully fills up, destroys, damages, or displaces any trench or mark made under section 4, shall, on conviction before a Magistrate, be liable to imprisonment for any term not exceeding one month, or to fine not exceeding fifty rupees, or to both.

47. If the Collector is opposed or impeded in taking possession under this Act of any land, he shall, if a Magistrate, enforce the surrender of the land to himself, and, if not a Magistrate, he shall apply to a Magistrate or (within the towns of Calcutta, Madras, and Bombay) to the Commissioner of Police, and such Magistrate or Commissioner (as the case may be) shall enforce the surrender of the land to the Collector.

48. (1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provisions of Part III. of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.

49. (1) The provisions of this Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory, or other building, if the owner desire that the whole of such house, manufactory, or building shall be so acquired:

Provided that the owner may, at any time before the Collector has made his award under section 11, by notice in writing, withdraw or modify his expressed desire that the whole of such house, manufactory, or building shall be so acquired.

Provided also that, if any question shall arise as to whether any land proposed to be taken under this Act does or not form part of a house, manufactory, or building within the meaning of this section, the Collector shall refer the determination of such question to the Court, and shall not take possession of such land until after the question has been determined.

In deciding on such a reference, the Court shall have regard to the question whether the land proposed to be taken is reasonably required for the full and unimpaired use of the house, manufactory, or building.

(d) If, in the case of any claim under section 23, sub-section 1, *thirdly*, by a person interested, on account of the severing of the land to be acquired from his other land, the Local Government is of opinion that the claim is unreasonable or excessive, it may at any time before the Collector has made his award, order the acquisition of the whole of the land of which the land first sought to be acquired forms a part.

(g) In the case last hereinbefore provided for, no fresh declaration or other proceedings under sections 6 to 10, both inclusive, shall be necessary; but the Collector shall, without delay, furnish a copy of the order of the Local Government to the person interested, and shall thereafter proceed to make his award under section 11.

50. (1) Where the provisions of this Act are put in force for the purpose of acquiring land at the cost of a local authority or company, of any fund controlled or managed by a local authority, or of any company, the charges of, and incidental to, such acquisition shall be defrayed from or by such fund or company.

(2) In any proceeding held before a Collector or Court in such cases the local authority or company concerned may appear and adduce evidence for the purpose of determining the amount of compensation :

Provided that no such local authority or company shall be entitled to demand a reference under section 18.

51. No award or agreement made under this Act shall be chargeable with stamp-duty, and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same.

52. No suit or other proceeding shall be commenced or prosecuted against any person for anything done in pursuance of this Act, without giving to such person a month's previous notice in writing of the intended proceeding, and of the cause thereof, nor after tender of sufficient amends.

53. Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the Code of Civil Procedure shall apply to proceedings before the Court to all proceedings before the Court under this Act.

54. Subject to the provisions of the Code of Civil Procedure applicable to appeals from original decrees, an appeal shall lie to the High Court from the award, or from any part of the award, of the Court in any proceedings under this Act.

55. (1) The Local Government shall have power to make rules consistent with this Act for the guidance of officers in all matters connected with its enforcement, and may, from time to time, alter and add to the rules so made.

(2) The power to make, alter, and add to rules under subsection 1 shall be subject to the condition of the rules being made, altered, or added to after previous publication.

(3) All such rules, alterations, and additions, shall, when sanctioned by the Governor-General in Council, be published in the official Gazette, and shall thereupon have the force of law.

ACT XVIII. OF 1885.*

The Land Acquisition (Mines) Act.

RECEIVED THE G.-G.'S ASSENT ON THE 16TH OCTOBER 1885.

An Act to provide for cases in which Mines or Minerals are situate under land which it is desired to acquire under the Land Acquisition Act, 1870.†

WHEREAS it is expedient to provide for cases in which mines or minerals are situate under land which it is desired to acquire under the Land Acquisition Act, 1870,‡ It is hereby enacted as follows :—

Short title, commencement, and local extent.

1. (1) This Act may be called "The Land Acquisition (Mines) Act 1885;" and

(2) It shall come into force at once.

(3) It extends, in the first instance, to the territories administered by the Governor of Madras in Council and the Lieutenant-Governor of Bengal, but any other Local Government may, from time to time, by notification in the official Gazette, extend this Act to the whole or any specified part of the territories under its administration.

2. Except as expressly provided by this Act, nothing in this Act shall affect the right of the Government to any mines or minerals.

3 (1) When the Local Government makes a declaration under section 6† of the Land Acquisition Act, 1870, that land is needed for a public purpose or for a company, it may, if it thinks fit, insert in the declaration a statement that the mines of coal, iron-stone, slate, or other minerals lying under the land or any particular portion of the land, except only such parts of the mines or minerals as it may be necessary to dig or carry away or use in the construction of the work for the purpose of which the land is being acquired, are not needed.

* Declared in force in—

(1) The Santhal Parganas (see Reg. III. of 1872, s. 3, as amended by Reg. III. of 1886);

(2) Angul and the Khondmals (see Reg. I. of 1894, s. 3);

† See now Act I. of 1894.

‡ Corresponding with s. 6 of Act I. of 1894.

(a) When a statement as aforesaid has not been inserted in the declaration made in respect of any land under section 6* of the Land Acquisition Act, 1870, and the Collector is of opinion that the provisions of this Act ought to be applied to the land, he may abstain from tendering compensation under section 11† of the said Land Acquisition Act in respect of the mines, and may—

(a) when he makes an award under section 14‡ of that Act, insert such a statement in his award;

(b) when he makes a reference to the Court under section 15§ of that Act, insert such a statement in his reference; or

(c) when he takes possession of the land under section 17|| of that Act publish such a statement in such manner as the Governor-General in Council may, from time to time, prescribe.

(g) If any such statement is inserted in the declaration, award, or reference, or published as aforesaid the mines of coal, iron-stone, slate or other minerals under the land or portion of the land specified in the statement, except as aforesaid, shall not vest in the Government when the land so vests under the said Act.

4. If the person for the time being immediately entitled to

Notice to be given before work or get any mines or minerals lying under any land so acquired is desirous of working or getting the same, he shall give the Local Government notice in writing of his intention so to do sixty days before the commencement of working.

5. (1) At any time or times after the receipt of a notice

Power to prevent or restrict working. under the last-foregoing section, and whether before or after the expiration of the said period of sixty days, the Local Government may cause the mines or minerals to be inspected by a person appointed by it for the purpose; and,

(a) if it appears to the Local Government that the working or getting of the mines or minerals, or any part thereof, is likely to cause damage to the surface of the land or any works thereon, the Local Government may publish, in such manner as the Gov-

* Corresponding with s. 6 of Act I. of 1894.

† Corresponding with s. 11 of Act I. of 1894.

‡ Corresponding with s. 12 of Act I. of 1894.

§ Corresponding with s. 18 of Act I. of 1894.

|| Corresponding with s. 17 of Act I. of 1899.

ernor-General in Council may, from time to time, direct, a declaration of its willingness, either—

(a) to pay compensation for the mines or minerals still unworked or ungot, or that part thereof, to all persons having an interest in the same; or

(b) to pay compensation to all such persons in consideration of those mines or minerals, or that part thereof, being worked or gotten in such manner and subject to such restrictions as the Local Government may in its declaration specify.

(3) If the declaration mentioned in case (a) is made, then those mines or minerals, or that part thereof, shall not thereafter be worked or gotten by any person.

(4) If the declaration mentioned in case (b) is made, then those mines or minerals, or that part thereof, shall not thereafter be worked or gotten by any person save in the manner and subject to the restrictions specified by the Local Government.

6. When the working or getting of any mines or minerals

Mode of determining persons interested and amount of compensation. has been prevented or restricted under section 5, the persons interested in those mines or minerals, and the amounts of compensation payable to them respectively, shall, subject to all necessary modifications, be ascertained in the manner provided by the Land Acquisition Act, 1870,* for ascertaining the persons interested in the land to be acquired under that Act, and the amounts of compensation payable to them, respectively.

7. (1) If, before the expiration of the said sixty days, the

If Local Government does not offer to pay compensation, mines may be worked in a proper manner. Local Government does not publish a declaration as provided in section 5, the owner, lessee, or occupier of the mines, may, unless and until such a declaration is subsequently made, work the mines or any part thereof in a manner proper and necessary for the beneficial working thereof, and according to the usual manner of working such mines in the local area where the same are situate.

(a) If any damage or obstruction is caused to the surface of the land or any works thereon by improper working of the mines, the owner, lessee, or occupier of the mines, shall at once, at his

*. See now Act I. of 1894.

own expense, repair the damage, or remove the obstruction, as the case may require.

(3) If the repair or removal is not at once effected, or, if the Local Government so thinks fit, without waiting for the same to be effected by the owner, lessee, or occupier, the Local Government may execute the same, and recover from the owner, lessee, or occupier the expense occasioned thereby.

8. If the working of any mines is prevented or restricted under section 5, the respective owners, lessees, and occupiers of the mines, if their mines extend so as to lie on both sides of the mines the working of which is prevented or restricted, may cut and make such and so many airways, headways, gateways, or water-levels through the mines, measures, or strata, the working whereof is prevented or restricted, as may be requisite to enable them to ventilate, drain, and work their said mines; but no such airway, headway, gateway, or water-level, shall be of greater dimensions or section than may be prescribed by the Governor-General in Council in this behalf, and, where no dimensions are so prescribed, not greater than eight feet wide and eight feet high, nor shall the same be cut or made upon any part of the surface or works, or so as to injure the same, or to interfere with the use thereof.

9. The Local Government shall, from time to time, pay to the Local Government to pay owner, lessee, or occupier of any such compensation for injury done mines extending so as to lie on both sides of the mines, the working of which is prevented or restricted, all such additional expenses and losses as may be incurred by him by reason of the severance of the lands lying over those mines, or of the continuous working of those mines being interrupted as aforesaid, or by reason of the same being worked in such manner and under such restrictions as not to prejudice or injure the surface or works, and for any minerals not acquired by the Local Government which cannot be obtained by reason of the action taken under the foregoing sections; and if any dispute or question arises between the Local Government and the owner, lessee, or occupier as aforesaid, touching the amount of those losses or expenses, the same shall be settled as nearly as may be in the manner provided for the settlement of questions touching the amount of compensation payable under the Land Acquisition Act, 1870.*

* See now Act I. of 1894.

10. If any loss or damage is sustained by the owner or occupier of the lands lying over any such mines, the working whereof has been so prevented or restricted as aforesaid (and not being the owner, lessee, or occupier of those mines), by reason of the making of any such airway or other works as aforesaid, which, or any like work, it would not have been necessary to make but for the working of the mines having been so prevented or restricted as aforesaid, the Local Government shall pay full compensation to that owner or occupier of the surface lands for the loss or damage so sustained by him.

11. For better ascertaining whether any mines lying under land acquired in accordance with the provisions of this Act are being worked, or have been worked, or are likely to be worked so as to damage the land or the works thereon, an officer appointed for this purpose by the Local Government may, after giving twenty-four hours' notice in writing, enter into and return from any such mines or the works connected therewith; and for that purpose the officer so appointed may make use of any apparatus or machinery belonging to the owner, lessee, or occupier of the mines, and use all necessary means for discovering the distance from any part of the land acquired to the parts of the mines which have been, are being, or are about to be worked.

12. If any owner, lessee, or occupier of any such mines or works, refuses to allow any officer appointed by the Local Government for that purpose to enter into and inspect any such mines or works in manner aforesaid, he shall be punished with fine which may extend to two hundred rupees.

13. If it appears that any such mines have been worked contrary to the provisions of this Act, the Local Government may, if it thinks fit, give notice to the owner, lessee, or occupier thereof to construct such works and to adopt such means as may be necessary or proper for making safe the land acquired and the works thereon, and preventing injury thereto; and if, after such notice, any such owner, lessee, or occupier does not forthwith proceed to construct the works necessary for making safe the land acquired and the works thereon, the Local Government may itself

construct the works, and recover the expense thereof from the owner, lessee, or occupier.

14. When a statement under section 3 has been made regarding any land, and the land has been acquired by the Government, and the land acquired has been transferred to a local authority or company, has been transferred to, or has vested by operation of law in, a local authority or company, then sections 4 to 13, both inclusive, shall be read as if for the words "the Local Government," wherever they occur in those sections, the words, "the local authority or company, as the case may be, which has acquired the land," were substituted.

15. (1) This Act shall apply to any land for the acquisition whereof proceedings under the Land Acquisition Act, 1870,* are pending at the time when this Act comes into force, unless before that time the Collector has made, in respect of the land, and award under section 14† or a reference to the Court under section 15‡ of that Act, or has taken possession of the land under section 17§ of the same.

(2) When the Collector has, before the said time, made an award or reference in respect of any such land, or taken possession thereof as aforesaid, and all the persons interested in the land, or entitled under the Land Acquisition Act, 1870,* to act for persons so interested, who have attended or may attend in the course of the proceedings under sections 11 to 15,|| both inclusive, of the Land Acquisition Act, 1870* consent in writing to the application of this Act to the land, the Collector may, by an order in writing, direct that it shall apply, and thereupon it shall be deemed to have applied, from the commencement of the proceedings; and the Collector shall be deemed, as the case may be, to have inserted in his award or reference, or to have published in the prescribed manner, when he took possession, the statement mentioned in section 3 of this Act.

* See now Act I. of 1894.

† Corresponding with s. 12 of Act I. of 1894.

‡ Corresponding with s. 18 of Act I. of 1894.

§ Corresponding with s. 17 of Act I. of 1894.

|| S. 11 corresponds with s. 11 of Act I. of 1894.

S. 12 " " S. 13 " " " "

S. 13 " " S. 15 " " " "

S. 14 " " S. 12 " " " "

S. 15 " " S. 18 " " " "

Definition of local authority and company.

16. In this Act—

(a) "local authority" means any municipal committee, district board, body of port commissioners, or other authority legally entitled to, or entrusted by the Government with, the control or management of any municipal or local fund; and

(b) "company" means a company registered under any of the enactments relating to companies from time to time in force in British India, or formed in pursuance of an Act of Parliament, or by Royal Charter or Letters Patent.

17. This Act shall, for the purposes of all enactments for
This Act to be read with the time being in force, be read with,
Land Acquisition Act, 1870*. and taken as part of, the Land Acquisition
Act, 1870.*

* See now Act I. of 1894.

THE LEGAL PRACTITIONERS ACT, 1879

(Act XVIII. of 1879).

[As amended by Act 1. of 1908]

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THE LEGAL PRACTITIONERS ACT, 1879 (Act XVIII. of 1879).*

RECEIVED G.-G.'S ASSENT ON 29TH OCTOBER 1879.

*An Act to consolidate and amend the Law relating to
Legal Practitioners.*

WHEREAS it is expedient to consolidate and amend the law relating to legal practitioners in the Lower Provinces of Bengal, the North-Western Provinces, the Punjab, Oudh, the Central Provinces, and Assam, and to empower each of the Local Governments of the rest of British India to extend, to the territories administered by it, such portions of this Act as such Government may think fit; It is hereby enacted as follows.—

CHAPTER I.

PRELIMINARY.

1. This Act may be called the Legal Practitioners Act, 1879,
and shall come into force on the first
day of January 1880.

Short title.

Commencement.

Local extent.

This section and section 2 extend
to the whole of British India.

The rest of this Act extends, in the first instance, only to the territories respectively administered by the Lieutenant-Governors of the Lower Provinces of Bengal, the North-Western Provinces, and the Punjab, and the Chief Commissioners of Oudh, the Central Provinces, and Assam. But any other Local Government may,

* For the Statement of Objects and Reasons, see *Gazette of India*, 1878, Pt. V., p. 381; for the Reports of the Select Committee, see *ibid.*, 1879, Pt. V., pp 51 and 841, for Proceedings in Council, see *ibid.*, 1878, Supplement, pp. 1658 and 1693; *ibid.*, 1879, Supplement, pp. 79, 1066, and 1375.

Act XVIII. of 1879 has been declared in force in Angul and the Khondmals by the Angul District Regulation (I. of 1894), s. 3, and, by notification under s. 3 (a) of the Scheduled Districts Act (XIV. of 1874), in the Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singhbhum.—See *Gazette of India*, 1881, Pt. I, p. 504 (The District of Lohardaga included at this time the District of Palamau, which was separated in 1894.)

from time to time, by notification in the official Gazette, extend* all or any of the provisions of the rest of this Act to the whole or any part of the territories under its administration.

2. On and from the first day of January 1880, the enactments mentioned in the First Schedule hereto annexed shall be repealed to the extent specified therein.

Repeal of enactments. All rules and appointments made, penalties prescribed, fees fixed, persons admitted, names enrolled, certificates issued, sanctions given, and orders passed under any enactment hereby repealed, shall be deemed to be respectively made, prescribed, fixed, admitted, enrolled, issued, given, and passed under this Act.

References to repealed enactments. All references made to any enactment hereby repealed, in any Act or Regulation passed, or notification published, shall be read as if made to the corresponding provisions of this Act.

Interpretation-clause— 3 In this Act, unless there be something repugnant in the subject or context,—

“Judge” means the presiding judicial officer in every Civil and Criminal Court, by whatever title he is designated :

“Subordinate Court” means all Courts subordinate to the High Court, including Courts of Small Causes established under Act No. IX. of 1850† or Act No. XI. of 1865 : ‡

* Under this power, the Act has been extended, subject to certain omissions, and so far only as it relates to Judicial Courts, Civil and Criminal, to the Madras Presidency, except the Scheduled Districts, from 1st April 1882—See *Fort St. George Gazette*, 1881, Pt. I., pp. 491 and 707. Ss 3 and 4 of the Act have been extended to the Regulation Districts of the Bombay Presidency (see *Bombay Government Gazette*, 1885, Pt. I., p. 290).

Ch. I., s. 40, Sch. II, and so much of Chs. III, V., VI., and VII. as relates to pleaders have been extended to Coorg—See *Mysore Gazette*, 1879, Pt. I., p. 355.

† See now the Presidency Small Cause Courts Act (XV. of 1882).

‡ See now the Provincial Small Cause Courts Act (IX. of 1887).

"Revenue-office" includes all Courts (other than Civil Courts) trying suits under any Act for the time being in force relating to landholders and their tenants or agents.

"Legal practitioner" means an advocate, vakil, or attorney of any High Court, a pleader, mukhtar, or revenue-agent :

"Tout" means a person who procures the employment in any legal business of any legal practitioner in consideration of any remuneration moving from such practitioner, or proposes to a legal practitioner to procure his employment in any legal business in consideration of such remuneration.

CHAPTER II.

OF ADVOCATES, VAKILS, AND ATTORNEYS.

4. Every person now or hereafter entered as an advocate or vakil on the roll of any High Court under the Letters Patent constituting such Court, or "under section 41 of this Act,"† or enrolled as a Pleader in the Chief Court of the Punjab under section 8 of this Act, ‡ shall be entitled to practise in all the Courts subordinate to the Court on the roll of which he is entered, and in all revenue-offices situate within the local limits of the appellate jurisdiction of such Court, subject, nevertheless, to the rules in force relating to the language in which the Court or office is to be addressed by pleaders or revenue-agents; and any person so entered, who ordinarily practises in the Court on the roll of which he is entered, or some Court subordinate thereto, shall, notwithstanding anything herein contained, be entitled, as such, to practise in any Court in British India other than a High Court on whose roll he is not entered, or with the permission of the Court, in any High Court on whose roll he is not entered, and in any revenue-office :

* The definition of "tout" has been added by the Legal Practitioners Act (XI. of 1896), s. 1.

† The words and figures quoted in s. 4 have been substituted for the words, "as an advocate on the roll of the Chief Court of the Punjab," by the Legal Practitioners Act (IX. of 1884), s. 2.

‡ In para. 1 of s. 4 and the Proviso following, the italicized words have been added by the Legal Practitioners (Amendment) Act (I. of 1908), s. 2.

Provided that no such *vakil* or *pleader* shall be entitled to practise under this section before a judge of the High Court, Division Court, or High Court exercising original jurisdiction in a presidency-town.

5. Every person now or hereafter entered as an attorney on the roll of any High Court shall be entitled to practise in all the Courts subordinate to such High Court, and in all revenue-offices situate within the local limits of the appellate jurisdiction of such High Court; and every person so entered, who ordinarily practises in the Court on the roll of which he is so entered, or some Court subordinate thereto, shall, notwithstanding anything herein contained, be entitled, as such, to practise in any Court in British India other than a High Court established by Royal Charter on the roll of which he is not entered, and in any revenue-office.

The High Court of the province in which an attorney practises under this section may, from time to time, make rules declaring what shall be deemed to be the functions, powers, and duties of an attorney so practising.

CHAPTER III.

OF PLEADERS AND MUKHTARS.

Power to make rules as to qualifications, &c., of pleaders and mukhtars.

6. The High Court may, from time to time, make rules* consistent with this Act as to the following matters (namely)—

- (a) the qualifications, admission, and certificates of proper persons to be pleaders of the subordinate Courts, and of the revenue-offices situate within the local limits of its appellate jurisdiction, and, in the case of a High Court not established by Royal Charter, of such Court;

* For rules made under this section by—

- (1) Judicial Commissioner, Central Provinces, *see* Central Provinces List of Local Rules and Orders, Ed. 1896, p. 30;
- (2) High Court, Madras, *see* Madras List of Local Rules and Orders, Vol I, Ed. 1898, pp. 150 and 151,
- (3) High Court, North-Western Provinces, *see* North Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, pp. 75 and 76,
- (4) Judicial Commissioner, Oudh, *see* North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p. 76

- (b) the qualifications, admission, and certificates of proper persons to be mukhtars of the subordinate Courts, and, in the case of a High Court not established by Royal Charter, of such Court ;
- (c) the fees to be paid for the examination and admission of such persons ; and
- (d) the suspension and dismissal of such pleaders and mukhtars.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law :

Publication of rules.

Provided that, in the case of rules made by a High Court not established by Royal Charter, such rules have been previously approved by the Local Government.

- ✓ 7. On the admission, under section 6, of any person as a pleader or mukhtar, the High Court shall cause a certificate signed by such officer as the Court, from time to time, appoints in this behalf, to be issued to such person, authorizing him to practise up to the end of the current year in the Courts, and, in the case of a pleader, also the revenue offices, specified therein.

At the expiration of such period, the holder of the certificate, if he desires to continue to practise, shall, subject to any rules* consistent with this Act which may, from time to time, be made by the High Court in this behalf, be entitled to have his certificate renewed by the Judge of the District Court within the local limits of whose jurisdiction he then ordinarily practises, or by such officer as the High Court, from time to time, appoints in this behalf.

On every such renewal, the certificate then in possession of such pleader or mukhtar shall be cancelled and retained by such Judge or officer.

Every certificate so renewed shall be signed by such Judge or officer, and shall continue in force up to the end of the current year.

* For rules regarding renewal of certificates made by—

- (1) Judicial Commissioner, Central Provinces, *see* Central Provinces List of Local Rules and Orders, Ed. 1896, p. 30 :
- (2) High Court, Madras, *see* the Rules quoted in foot-note on previous page, which were also made under s. 7.

Every Judge or officer so renewing a certificate shall notify such renewal to the High Court.

"Provided that, on the admission as a pleader of any person who has been previously entered as a vakil or attorney on the roll of a High Court established by Royal Charter, the High Court may in its discretion issue to such person a certificate authorizing him to practise permanently in the Courts and in the offices specified therein, and a certificate so issued shall not require to be renewed under this section."

8. Every pleader holding a certificate issued under section 7
Pleaders, on enrolment, may apply to be enrolled in any Court
 may practise in Courts and or revenue-office mentioned therein, and
 revenue-offices. situate within the local limits of the
 appellate jurisdiction of the High Court by which he has been
 admitted; and subject to such rules† consistent with this Act as
 the High Court or the Chief Controlling Revenue-authority may,
 from time to time, make in this behalf, the presiding Judge or
 officer shall enrol him accordingly; and thereupon he may appear,
 plead, and act in such Court or office, and in any Court or revenue-
 office subordinate thereto.

9. Every mukhtar holding a certificate issued under section 7
Mukhtars, on enrolment, may apply to be enrolled in any Civil
 may practise in Courts. or Criminal Court mentioned therein,
 and situate within the same limits; and, subject to such rules as
 the High Court may, from time to time, make in this behalf, the
 presiding Judge shall enrol him accordingly, and thereupon he
 may practise as a mukhtar in any such Civil Court and any Court
 subordinate thereto, and may (subject to the provisions of the Code
 of Criminal Procedure‡) appear, plead, and act in any such Cri-
 minal Court, and any Court subordinate thereto.

✓ 10. Except as provided by this Act, or any other enactment
 No person to practise as for the time being in force, no person
 pleader or mukhtar unless shall practise as a pleader or mukhtar
 qualified. in any Court not established by Royal
 Charter unless he holds a certificate issued under section 7, and

* This *proviso* quoted has been added by the Legal Practitioners (Amendment) Act (I of 1908), s 3.

† For rules made by the High Court at Madras, see those quoted in the foot note on p 6, *supra*, which were also made under s 8

‡ See now the Code of Criminal Procedure (Act V. of 1898).

has been enrolled in such Court, or in some Court to which it is subordinate :

Provided that persons who have been admitted as revenue-agents before the first day of January 1880, and hold certificates, as such, under this Act in the territories administered by the Lieutenant-Governor of Bengal, may be enrolled, in manner provided by section 9, in any Munsif's Court in the said territories, and, on being so enrolled, may appear, plead, and act in such Court in suits under Bengal Act No. VIII. of 1869* *(to amend the procedure in suits between landlord and tenant)*, or under any other Act for the time being in force regulating the procedure in suits between landholders and their tenants and agents.

11. Notwithstanding anything contained in the Code of Civil Procedure,† the High Court may, from time to time, make rules declaring what shall be deemed to be the functions, powers, and duties of mukhtars practising in the subordinate Courts, and, in the case of a High Court not established by Royal Charter, in such Court.

12. The High Court may suspend or dismiss any pleader or mukhtar holding a certificate issued under section 7 who is convicted of any criminal offence implying a defect of character, which unfits him to be a pleader or mukhtar, as the case may be.

13.† The High Court may also, after such inquiry as it thinks fit, suspend or dismiss any pleader or mukhtar holding a certificate as aforesaid—

Suspension and dismissal of pleaders and mukhtars convicted of criminal offence.

Suspension and dismissal of pleaders and mukhtars guilty of unprofessional conduct.

(a) who takes instructions in any case except from the party on whose behalf he is retained, or some person who is the recognized agent of such party within the meaning of the Code of Civil Procedure,‡ or some servant, relative, or friend authorized by the party to give such instructions, or

* See now the Bengal Tenancy Act (VIII. of 1885).

† See now the new Code of Civil Procedure (Art V. of 1908).

‡ This section (13) has been substituted for the original by the Legal Practitioners Act (XI. of 1896), s. 2.

- (b) who is guilty of fraudulent or grossly improper conduct in the discharge of his professional duty, or
- (c) who tenders, gives, or consents to the retention, out of any fee paid or payable to him for his services, of any gratification for procuring or having procured the employment, in any legal business, of himself or any other pleader or mukhtar, or
- (d) who, directly or indirectly, procures, or attempts to procure, the employment of himself as such pleader or mukhtar through or by the intervention of any person to whom any remuneration for obtaining such employment has been given by him, or agreed or promised to be so given, or
- (e) who accepts any employment in any legal business through a person who has been proclaimed as a tout under section 36, or
- (f) for any other reasonable cause.

14. If any such pleader or mukhtar practising in any subordinate Court, or in any revenue-office, is charged in such Court or office with taking instructions except as aforesaid, or with any such misconduct as aforesaid. *Procedure when charge of unprofessional conduct is brought in subordinate Court or revenue-office.* the presiding officer shall send him a copy of the charge, and also a notice that, on a day to be therein appointed, such charge will be taken into consideration.

Such copy and notice shall be served upon the pleader or mukhtar at least fifteen days before the day so appointed.

On such day, or on any subsequent day to which the enquiry may be adjourned, the presiding officer shall receive and record all evidence properly produced in support of the charge, or by the pleader or mukhtar, and shall proceed to adjudicate on the charge.

If such officer finds the charge established, and considers that the pleader or mukhtar should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof, and shall report the same to the High Court; and the High Court may acquit, suspend, or dismiss the pleader or mukhtar.

Any District Judge or, with his sanction, any Judge subordinate to him, "any Judge of a Court of Small Causes of a Presidency-town,"* any District Magistrate or, with his sanction, any Magistrate subordinate to him, and any Revenue Authority not inferior to a Collector, or, with the Collector's sanction, any Revenue Officer subordinate to him, may, pending the investigation and the orders of the High Court, suspend from practice any pleader or mukhtar charged before him or it under this section.

Every report made to the High Court under this section shall,—

- (a) when made by any Civil Judge subordinate to the District Judge, be made through such Judge;
- (b) when made by a Magistrate subordinate to the Magistrate of the District,† be made through the Magistrate of the District‡ and the Sessions Judge;
- (c) when made by the Magistrate of the District,† be made through the Sessions Judge;
- (d) when made by any Revenue Officer subordinate to the Chief Controlling Revenue Authority, be made through such Revenue Authorities as the Chief Controlling Revenue Authority may, from time to time, direct.

Every such report shall be accompanied by the opinion of each Judge, Magistrate, or Revenue Authority through whom or which it is made.

15. The High Court, in any case in which a pleader or

Power to call for record in case of acquittal under section 14. mukhtar has been acquitted under section 14 otherwise than by an order of the High Court, may call for the record, and pass such order thereon as it thinks fit.

16. Notwithstanding anything contained in any Letters Patent,

Power to make rules for mukhtars on appellate side of High Court. or in the Code of Civil Procedure,‡ section 37, clause (a), any High Court established by Royal Charter may, from

* In s. 14, para 5, the words quoted have been inserted by the Legal Practitioners Act (IX. of 1884), s. 4.

† To be read as District Magistrate.—See the present Code of Criminal Procedure (Act V. of 1898), s. 3 (2).

‡ See now the new Code of Civil Procedure (Act V. of 1908), Or. III., r. 2, corresponding with s. 37 of the Code of 1882 (Act XIV. of 1882).

time to time, make rules consistent with this Act as to the following matters (namely)—

- (a) the qualifications and admission of proper persons to be mukhtars practising on the appellate side of such Court,
- (b) the fees to be paid for the examination and admission of such persons;
- (c) the security which they may be required to give for their honesty and good conduct;
- (d) the suspension and dismissal of such mukhtars; and
- (e) declaring what shall be deemed to be their functions, powers, and duties;

any may prescribe and impose fines for the infringement of such rules not exceeding in any case five hundred rupees; and such fines, when imposed, may be recovered as if they had been imposed in the exercise of the High Court's ordinary original criminal jurisdiction.

CHAPTER IV.

OF REVENUE-AGENTS *

Power to make rules as to qualifications, &c., of revenue-agents.

17. The Chief Controlling Revenue Authority may, from time to time, make rules† consistent with this Act as to the following matters (namely)—

- (a) the qualifications, admission, and certificates of proper persons to be revenue-agents;
- (b) the fees to be paid for the examination and admission of such persons;
- (c) the suspension and dismissal of such revenue-agents; and

* Revenue-agents in Oudh may appear, plead, and act in suits under the Oudh Rent Act (XIX of 1858).—See Act XVIII. of 1876, s. 25, and the third clause of s. 2 of this Act

† For rules made under this section as to revenue-agents in—

(1) Assam, see the Assam Manual of Local Rules and Orders, Ed. 1893, pp 153-158

(2) North-Western Provinces, see North-Western Provinces List of Local Rules and Orders, Ed 1894, p 76.

(d) declaring what shall be deemed to be their functions, powers, and duties.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.
Publication of rules.

18. On the admission of any person as a revenue-agent under section 17, the Chief Controlling Revenue Authority shall cause a certificate, signed by such officer as such authority, from time to time, appoints in this behalf, to be issued to such person, authorizing him to practise up to the end of the current year in such revenue-offices as may be specified therein.

At the expiration of such period, the holder of the certificate, if he desires to continue to practise, shall be entitled to have his certificate renewed by the Secretary of the Chief Controlling Revenue Authority, or by any other officer authorized by such authority in that behalf.

On every such renewal, the certificate then in the possession of such revenue-agent shall be cancelled and retained by such Secretary or other officer.

Every certificate so renewed shall be signed by such Secretary or other officer, and shall continue in force to the end of the current year.

Every officer so renewing a certificate shall notify the renewal to the Chief Controlling Revenue Authority.

19. Every revenue-agent holding a certificate issued under section 18 may apply to be enrolled in any revenue-office mentioned therein, and situate within the limits of the territory under the Chief Controlling Revenue Authority; and, subject to such rules as the Chief Controlling Revenue Authority may, from time to time, make in this behalf, the officer presiding in such office shall enrol him accordingly, and thereupon he may practise as a revenue-agent in such office, and in any revenue-office subordinate thereto.

20. Except as provided by this Act or any other enactment for the time being in force, no person, other than a pleader duly qualified under the provisions hereinbefore contained, shall practise as a revenue-agent in any revenue-office, unless he—
No person to act as agent in revenue-offices unless qualified.

holds a certificate issued under section 18, and has been enrolled in such office or some other office to which it is subordinate :

Provided that any person duly authorized in this behalf may, with the sanction of the Chief Controlling Revenue Authority, or of an officer empowered by the Local Government in this behalf, transact all or any business in which his principal may be concerned in any revenue-office.

The sanction mentioned in this section may be general or special, and may at any time be revoked or suspended by the authority or officer granting the same.

21. The Chief Controlling Revenue Authority may suspend or dismiss any revenue-agent holding a certificate issued under this Act, who is convicted of any criminal offence implying a defect of character which unfits him to be a revenue-agent.

22.* The Chief Controlling Revenue Authority may also, after such enquiry as it thinks fit, suspend or dismiss any revenue-agent holding a certificate as aforesaid—

- (a) who is guilty of fraudulent or grossly improper conduct in the discharge of his professional duty, or
- (b) who tenders, gives, or consents to the retention out of any fee paid or payable to him for his services, of any gratification for procuring, or having procured, the employment, in any legal business, of himself or any other revenue-agent, or
- (c) who, directly or indirectly, procures, or attempts to procure, the employment of himself as such revenue-agent through, or by the intervention of, any person to whom any remuneration for obtaining such employment has been given by him, or agreed or promised to be so given, or
- (d) who accepts any employment in any legal business through a person who has been proclaimed as a tout under section 36, or
- (e) for any other reasonable cause.

* S. 22 has been substituted for the original by the Legal Practitioners (Amendment) Act (XI. of 1896), s. 3.

23. If any revenue-agent holding a certificate issued under this Act is charged with any such conduct in any office subordinate to the Chief Controlling Revenue Authority, or in the Court of any Munsif, the officer at the head of such office, or such Munsif, as the case may be, shall send him a copy of the charge and also a notice that, on a day to be therein appointed, such charge will be taken into consideration.

Such copy and notice shall be served upon the person charged at least fifteen days before the day so appointed. On such day, or on any other day to which the enquiry may be adjourned, the officer or Munsif shall receive all evidence properly produced in support of the charge, or by the person charged, and shall proceed to adjudicate on the charge.

If the officer or Munsif finds the charge established, and considers that the person charged should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof, and report the same to the Chief Controlling Revenue Authority; and such authority shall proceed to acquit, suspend, or dismiss him.

Any Revenue-officer not inferior to a Collector, and, with the Collector's sanction, any Revenue-officer subordinate to him, or any Munsif in his district, may, pending the investigation and the orders of the Chief Controlling Revenue Authority, suspend from practice any revenue-agent charged before him under this section.

Where any officer acting under this section is subordinate to the Commissioner of a Division, he shall transmit the report through such Commissioner, who shall forward with the same an expression of his own opinion on the case.

24. The Chief Controlling Revenue Authority, in any case in which a revenue-agent has been acquitted under section 23 otherwise than by an order of the Chief Controlling Revenue Authority, may call for the record, and pass such order thereon as seems fit.

Power to Chief Controlling Revenue Authority to call for record.

CHAPTER V.

OF CERTIFICATES.

25. Every certificate, whether original or renewed, issued under this Act, shall be written upon stamped paper of the value prescribed therefor in the second schedule hereto annexed, "and of such description as the Local Government may from time to time prescribe:"*

Provided that a certificate issued on or after the first day of July in any year may be written on stamped paper of half the value so prescribed.

"Provided also that no stamped paper shall be required in the case of a certificate, whether original or renewed, authorizing, under section 7, a Vakil or Attorney on the roll of a High Court established by Royal Charter to practise as a Pleader."†

26 When any Pleader, Mukhtar, or Revenue-agent is suspended or dismissed under this Act, he shall forthwith deliver up his certificate to the Court or officer at the head of the office before or in which he was practising at the time he was so suspended or dismissed, or to any Court or officer to which the High Court or Chief Controlling Revenue Authority (as the case may be) orders him to deliver the same.

* In s. 25, the words quoted have been inserted by the Legal Practitioners Act (IX of 1884), s. 5. For instance of rule prescribing the stamp paper to be used for certificates, see Central Provinces List of Local Rules and Orders, Ed. 1896, p. 78.

† The second proviso in s. 25 is added by the Legal Practitioners (Amendment) Act (I of 1908), s. 4.

CHAPTER VI.

OF THE REMUNERATION OF PLEADERS, MUKHTARS AND REVENUE-AGENTS.

27. The High Court shall, from time to time, fix and regulate the fees* payable by any party in respect of the fees of his adversary's advocate, pleader, vakil, mukhtar, or attorney upon all proceedings(a) on the appellate side of such Court, (b) in the case of a High Court not established by Royal Charter, on its original side, and (c) in subordinate Courts, "and in respect of the fees of his adversary's revenue-agent appearing, pleading, or acting under section 10."†

The Chief Controlling Revenue Authority shall, from time to time, fix and regulate the fees‡ payable upon all proceedings in the revenue-offices by any party in respect of the fees of his adversary's advocate, pleader, vakil, attorney, mukhtar, or revenue-agent.

Tables of the fees so fixed shall be published in the local official Gazette

Exception as to agents mentioned in section 20.

Nothing in this section applies to the agents mentioned in the proviso to section 20.

28. No agreement entered into by any pleader, mukhtar, or revenue-agent with any person retaining or employing him, respecting the amount

Agreements with clients.

* For rules as to pleaders' fees made by—

- (1) Judicial Commissioner, Central Provinces, *see* the Central Provinces List of Local Rules and Orders, Ed 1896, p 79;
- (2) High Court, Madras, *see* the rules quoted in the foot-note on p. 6, *supra*, which were also framed under this section,
- (3) High Court, North-Western Provinces, *see* North-Western Provinces List of Local Rules and Orders, Ed. 1894, p 78,
- (4) Judicial Commissioner, Oudh (pleaders in Civil Courts), *see* North-Western Provinces List of Local Rules and Orders, Ed 1894, p 78

† To s 27, the words quoted have been added by the Legal Practitioners Act (IX of 1884), s. 6

‡ For rules as to fees in revenue-proceedings in—

- (1) Central Provinces, *see* Central Provinces List of Local Rules and Orders, Ed 1896, p. 80;
- (2) North-Western Provinces and Oudh, *see*, North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, pp. 76 and 77.

and manner of payment for the whole or any part of any past or future services, fees, charges, or disbursements in respect of business done or to be done by such pleader, mukhtar, or revenue-agent, shall be valid, unless it is made in writing, signed by such person, and is, within fifteen days from the day on which it is executed, filed in the District Court, or in some Court, in which some portion of the business in respect of which it has been executed has been or is to be done.

29. Where a suit is brought to enforce any such agreement, if

Power to modify or cancel the agreement is not proved to be fair and reasonable, the Court may reduce

the amount payable thereunder, or order it to be cancelled, and the costs, fees, charges, and disbursements in respect of the business done, to be ascertained in the same manner as if no such agreement had been made.

30. Such an agreement shall exclude any further claim of the

Agreements to exclude pleader, mukhtar, or revenue-agent further claims. beyond the terms of the agreement with

respect to any services, fees, charges, or disbursements in relation to the conduct and completion of the business in respect of which the agreement is made, except such services, fees, charges, or disbursements, if any, as are expressly excepted by the agreement.

31. A provision in any such agreement that the pleader,

Reservation of responsibility for negligence. mukhtar, or revenue-agent shall not be liable for negligence, or that he shall

be relieved from any responsibility to which he would otherwise be subject as such pleader, mukhtar, or revenue-agent, shall be wholly void.

CHAPTER VII.

PENALIES—

32. Any person who practises in any Court or revenue-office

On persons illegally practising as pleaders, mukhtars, or revenue-agents. in contravention of the provisions of section 10 or section 20 shall be liable, by order of such Court or the officer at

the head of such office, to a fine not exceeding ten times the amount of the stamp required by this Act for a certificate authorizing him so to practise in such Court or office, and, in default of payment,

to imprisonment in the civil jail for a term which may extend to six months.

He shall also be incapable of maintaining any suit for, or enforcing any lien with respect to, any fee or reward for, or with respect to, anything done, or any disbursement made, by him as pleader, mukhtar, or revenue-agent whilst he has been contravening the provisions of either of such sections.

33. Any pleader, mukhtar, or revenue-agent failing to deliver up his certificate as required by section 26 shall be liable, by order of the Court, authority, or officer, to which or to whom, or according to whose orders, the delivery should be made, to a fine not exceeding two hundred rupees, and, in default of payment, to imprisonment in the civil jail for a term which may extend to three months.

34. Any pleader, mukhtar, or revenue-agent, who, under the provisions of this Act, has been suspended or dismissed, and who, during such suspension or after such dismissal, practises as a pleader, mukhtar, or revenue-agent in any Court or revenue-office, shall be liable, by order of such Court or the officer at the head of such office, to a fine not exceeding five hundred rupees, and, in default of payment, to imprisonment in the civil jail for a term which may extend to six months.

35. Every order under section 32, 33, or 34 shall be subject to revision by the High Court where the order has been passed by a subordinate Court, and by the Chief Controlling Revenue Authority where the order has been passed by an officer subordinate to such authority.

36.* (1) Every High Court, District Judge, Sessions Judge, District Magistrate, and Presidency Magistrate, every Revenue-officer, not being below the rank of a Collector of a District, and the Chief Judge of every Presidency Small Cause Court (each as regards their or his own Court and the Courts, if any, subordinate thereto), may frame and publish lists of persons proved to their or his satisfaction,

* S. 36 has been substituted for the original section (relating to penalty for receiving or giving commission) by the Legal Practitioners Act (XI. of 1896), s. 4.

by evidence of general repute or otherwise, habitually to act as tout, and may, from time to time, alter and amend such lists.

(2) No person's name shall be included in any such list until he shall have had an opportunity of showing cause against such inclusion.

(3) A copy of every such list shall be kept hung up in every Court to which the same relates.

(4) The Court or Judge may, by general or special order, exclude from the precincts of the Court any person whose name is included in any such list.

(5) Every person whose name is included in any such list shall be deemed to be proclaimed as a tout within the meaning of section 13, clause (c), and section 22, clause (d).

CHAPTER VIII.

MISCELLANEOUS.

87. To facilitate the ascertainment of the qualifications mentioned in sections 6 and 17, respectively, Local Government to appoint examiners. the Local Government shall, from time to time, appoint persons to be examiners for the purposes aforesaid, and may, from time to time, make regulations for conducting such examinations.

88. Except as provided by sections 4, 5, 7,* 16, 25,* 27, 32, Exemption of High Court practitioners from certain parts of Act. and 36, nothing in this Act applies to advocates, vakils, and attorneys admitted and enrolled by any High Court under the Letters Patent by which such Court is constituted, or to mukhtars practising in such Court, or to advocates enrolled "under section 41 of this Act."†

89. When any person who holds a certificate as a mukhtar under section 7, and a certificate as a revenue-agent under section 18, is suspended or dismissed in one of such capacities, he shall be deemed to be suspended or dismissed, as the case may be, also in the other.

* The figures "7" and "25" are inserted by the Legal Practitioners (Amendment) Act (I. of 1903), s. 5

† In s 38, the words quoted have been substituted for the words, "by the Chief Court of the Punjab," by the Legal Practitioners Act (IX of 1884), s. 7.

40. Notwithstanding anything hereinbefore contained, no pleaders, &c., not to be suspended or dismissed without being heard. shall be suspended or dismissed under this Act unless he has been allowed an opportunity of defending himself before the authority suspending or dismissing him.

41.* (1) A High Court not established by Royal Charter may, from time to time, with the previous sanction of the Local Government, make rules as to the qualifications and admission of proper persons to be advocates of the Court, and, subject to such rules, may enrol such and so many advocates as it thinks fit.

(2) Every advocate so enrolled shall be entitled to appear for the suitors of the Court, and to plead or to act, or to plead and act for those suitors, according as the Court may by its rules determine, and subject to those rules.

(3) The High Court may dismiss any advocate so enrolled, or suspend him from practice :

(4) Provided that an advocate shall not be dismissed or suspended under this section unless he has been allowed an opportunity of defending himself before the High Court which enrolled him,, "and, except in the case of the Chief Court of the Punjab and the Chief Court of Lower Burma,"† unless the order of the High Court dismissing or suspending him has been confirmed by the Local Government.

42.‡ "So much of Chapter VI. of Bombay Regulation II. of 1827 as has not been repealed,"§
 Repeal of Acts I. of 1846 and XX. of 1853. Act I. of 1846 (*for amending the law regarding the appointment and remuneration of pleaders in the Courts of the East India Company*) and Act XX. of 1853 (*to amend the law relating to pleaders in the Courts of the East India Company*) are repealed.

* S. 41 has been substituted by the Legal Practitioners Act (IX. of 1884), s. 8, for the original s. 41 (relating to advocates of the Punjab Chief Court).

† In s. 41, sub s. (4), the words quoted have been inserted by the Lower Burma Courts Act (VI. of 1900), Sch. I., Pt. I.

‡ S. 42 has been added by the Legal Practitioners Act (IX. of 1884), s. 9.

§ The words quoted in s. 42 have been inserted by Act I. of 1903, Sch. II.

FIRST SCHEDULE :

ENACTMENTS REPEALED.

(See section 2.)

Number and Date of Enactments.	Title.	Extent of Repeal.
Act XX. of 1865 ...	To amend the law relating to Pleaders and Mukhtars.	The whole.
Act XXIX. of 1865	To amend the Pleaders, Mukhtars, and Revenue-agents Act, 1865.	So much as has not been repealed.
Act IX. of 1866 ...	To extend to the Sadar Court of the North-Western Provinces certain provisions of the Pleaders, Mukhtars and Revenue-agents Act, 1865, and of Act No XXIX. of 1865	The whole.
Act IV. of 1876 ...	To authorize Revenue-agents to practise in certain suits in the Munsifs' Courts of the Lower Provinces of Bengal.	The whole.
Act XVII of 1877.	The Punjab Courts Act, 1877 ...	Sections 42, 43, 44, and 45.

SECOND SCHEDULE:

VALUE OF STAMPS FOR CERTIFICATES.

(See section 25.)

I.

For a certificate authorizing the holder to practise as a pleader—

- (a) in the High Court and any subordinate Court—Rupees fifty :
- (b) in any Court of Small Causes in a Presidency-town—Rupees twenty-five :
- (c) in all other subordinate Courts—Rupees twenty-five :
- (d) in the Courts of Subordinate Judges, Munsifs, Assistant Commissioners, Extra Assistant Commissioners, and Tahsildars, in Courts of Small Causes outside the Presidency-towns, and in all Criminal Courts subordinate to the High Court—Rupees fifteen
- (e) in the Courts of Munsifs and any Civil or Criminal Court of first instance not hereinbefore specifically mentioned—Rupees five.

II.

For a certificate authorizing the holder to practise as a mukhtar—

- (f) in the High Court and any subordinate Court—Rupees twenty-five :
- (g) in any Court of Small Causes in a Presidency-town—Rupees fifteen :
- (h) in all other subordinate Courts—Rupees fifteen :
- (i) in the Courts of Subordinate Judges, Munsifs, Assistant Commissioners, Extra Assistant Commissioners, and Tahsildars in Courts of Small Causes outside the Presidency-towns, and in all Criminal Courts subordinate to the High Court—Rupees ten :
- (j) in the Courts of Munsifs and any Civil or Criminal Court of first instance not hereinbefore specifically mentioned—Rupees five.

III.

For a certificate authorizing the holder to practise as a revenue agent—

- (k) in the office of the Chief Controlling Revenue Authority and in any revenue-office subordinate to such authority—Rupees fifteen.
 - (l) in the office of a Commissioner, and in any revenue-office subordinate to a Commissioner—Rupees ten.
 - (m) in the office of a Collector, and in any revenue-office subordinate to a Collector—Rupees five.
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ACT NO. IX. OF 1908.

The Indian Limitation Act, 1908.

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SECTION 31THE THIRD SCHEDULE—ENACT-
MENTS REPEALED.

ACT NO. IX. OF 1908.

The Indian Limitation Act, 1908.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

[Received G.-G.'s Assent on the 7th August 1908.]

An Act to consolidate and amend the Law for the Limitation of Suits, and for other purposes.

WHEREAS it is expedient to consolidate and amend the law relating to the limitation of suits, appeals, and certain applications to Courts; and whereas it is also expedient to provide rules for acquiring by possession the ownership of easements and other property; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

Short title, extent, and commencement.

1. (1) This Act may be called the Indian Limitation Act, 1908.

(2) It extends to the whole of British India; and

(3) This section and section 31 shall come into force at once. The rest of this Act shall come into force on the first day of January 1909.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) "applicant" includes any person from or through whom an applicant derives his right to apply:

(2) "bill of exchange" includes a hundi and a cheque:

(3) "bond" includes any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be:

(4) "defendant" includes any person from or through whom a defendant derives his liability to be sued:

(5) "easement" includes a right not arising from contract, by which one person is entitled to remove and appropriate for his own profit any part of the soil belonging to another or anything growing in, or attached to, or subsisting upon, the land of another.

(6) "foreign country" means any country other than British India :

(7) "good faith:" nothing shall be deemed to be done in good faith which is not done with due care and attention :

(8) "plaintiff" includes any person from or through whom a plaintiff derives his right to sue :

(9) "promissory note" means any instrument whereby the maker engages absolutely to pay a specified sum of money to another at a time therein limited, or on demand, or at sight :

(10) "suit" does not include an appeal or an application ; and

(11) "trustee" does not include a benamidar, a mortgagee remaining in possession after the mortgage has been satisfied, or a wrongdoer in possession without title.

PART II.

LIMITATION OF SUITS, APPEALS, AND APPLICATIONS.

3. Subject to the provisions contained in sections 4 to 25 (inclusive), every suit instituted, appeal preferred, and application made, after the period of limitation prescribed therefor by the first schedule shall be dismissed, although limitation has not been set up as a defence.

Explanation.—A suit is instituted, in ordinary cases, when the plaint is presented to the proper officer ; in the case of a pauper, when his application for leave to sue as a pauper is made ; and, in the case of a claim against a company which is being wound up by the Court, when the claimant first sends in his claim to the official liquidator.

4. Where the period of limitation prescribed for any suit, appeal, or application expires on a day when the Court is closed, the suit, appeal, or application may be instituted, preferred, or made on the day that the Court re-opens.

5. Any appeal or application for a review of judgment or Extension of period in for leave to appeal, or any other application to which this section may be made certain cases. applicable by any enactment or rule for the time being in force, may be admitted after the period of limitation prescribed therefor, when the appellant or applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation.—The fact that the appellant or applicant was misled by any order, practice, or judgment of the High Court in ascertaining or computing the prescribed period of limitation may be sufficient cause within the meaning of this section.

6. (1) Where a person entitled to institute a suit or make an application for the execution of a decree is, at the time from which the Legal disability. period of limitation is to be reckoned, a minor, or insane, or an idiot, he may institute the suit or make the application within the same period after the disability has ceased, as would otherwise have been allowed from the time prescribed therefor in the third column of the first schedule.

(2) Where such person is, at the time from which the period of limitation is to be reckoned, affected by two such disabilities, or where, before his disability has ceased, he is affected by another disability, he may institute the suit or make the application within the same period, after both disabilities have ceased, as would otherwise have been allowed from the time so prescribed.

(3) Where the disability continues up to the death of such person, his legal representative may institute the suit or make the application within the same period after the death as would otherwise have been allowed from the time so prescribed.

(4) Where such representative is, at the date of the death, affected by any such disability, the rules contained in sub-sections (1) and (2) shall apply.

Illustrations.

(a) The right to sue for the hire of a boat accrues to A during his minority. He attains majority four years after such accrues. He may institute his suit at any time within three years from the date of his attaining majority.

(b) A right to sue accrues to Z during his minority. After the accrues, but while Z is still a minor, he becomes insane. Time runs against Z from the date when his insanity and minority cease.

(c) A right to sue accrues to X during his minority. X dies before attaining majority, and is succeeded by Y, his minor son. Time runs against Y from the date of his attaining majority.

7. Where one of several persons jointly entitled to institute a suit or make an application for the execution of a decree is under any such disability, and a discharge can be given without the concurrence of such person, time will run against them all; but, where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others or until the disability has ceased.

Illustrations.

(a) A incurs a debt to a firm of which B, C, and D are partners. B is insane, and C is a minor. D can give a discharge of the debt without the concurrence of B and C. Time runs against B, C, and D

(b) A incurs a debt to a firm of which E, F, and G are partners. E and F are insane, and G is a minor. Time will not run against any of them until either E or F becomes sane, or G attains majority.

8. Nothing in section 6 or in section 7 applies to suits to enforce rights of pre-emption, or shall be deemed to extend, for more than three years from the cessation of the disability or the death of the person affected thereby, the period within which any suit must be instituted or application made.

Illustrations.

(a) A, to whom a right to sue for a legacy has accrued during his minority, attains majority eleven years after such accrual. A has, under the ordinary law, only one year remaining within which to sue. But, under section 6 and this section, an extension of two years will be allowed him making in all a period of three years from the date of his attaining majority, within which he may bring his suit.

(b) A right to sue for an hereditary office accrues to A who at the time is insane. Six years after the accrual A recovers his reason. A has six years, under the ordinary law, from the date when his insanity ceased within which to institute a suit. No extension of time will be given him under section 6 read with this section.

(c) A right to sue as landlord to recover possession from a tenant accrues to A, who is an idiot. A dies three years after the accrual, his idiocy continuing up to the date of his death. A's representative in interest has, under the ordinary law, nine years from the date of A's death within which to bring a suit. Section 6 read with this section does not extend

that time, except where the representative is himself under disability when the representation devolves upon him.

9. Where once time has begun to run, no subsequent disability or inability to sue stops it:

Provided that, where letters of administration to the estate of a creditor have been granted to his debtor, the running of the time prescribed for a suit to recover the debt shall be suspended while the administration continues.

10. Notwithstanding anything hereinbefore contained, no suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration), for the purpose of following in his or their hands such property, or the proceeds thereof, or for an account of such property or proceeds, shall be barred by any length of time.

11. (1) Suits instituted in British India on contracts entered into in a foreign country are subject to the rules of limitation contained in this Act.

(2) No foreign rule of limitation shall be a defence to a suit instituted in British India on a contract entered into in a foreign country unless the rule has extinguished the contract, and the parties were domiciled in such country during the period prescribed by such rule.

PART III.

COMPUTATION OF PERIOD OF LIMITATION.

12. (1) In computing the period of limitation prescribed for any suit, appeal, or application, the day from which such period is to be reckoned shall be excluded.

(2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal, and an application for a review of judgment, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence, or order appealed from or sought to be reviewed, shall be excluded.

(g) Where a decree is appealed from or sought to be reviewed, the time requisite for obtaining a copy of the judgment on which it is founded shall also be excluded.

(4) In computing the period of limitation prescribed for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

13. In computing the period of limitation prescribed for any suit, the time during which the defendant has been absent from British India and from the territories beyond British India under the administration of the Government shall be excluded.

14. (1) In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the defendant, shall be excluded, where the proceeding is founded upon the same cause of action, and is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation prescribed for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the same party for the same relief, shall be excluded, where such proceeding is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

Explanation I.—In excluding the time during which a former suit or application was pending, the day on which that suit or application was instituted or made, and the day on which the proceedings therein ended, shall both be counted.

Explanation II.—For the purposes of this section, a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding.

Explanation III.—For the purposes of this section, misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.

15. (1) In computing the period of limitation prescribed for any suit or application for the execution of a decree, the institution or execution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

(2) In computing the period of limitation prescribed for any suit, of which notice has been given in accordance with the requirements of any enactment for the time being in force, the period of such notice shall be excluded.

16. In computing the period of limitation prescribed for a suit for possession by a purchaser at a sale in execution of a decree, the time during which a proceeding to set aside the sale has been prosecuted shall be excluded.

17. (1) Where a person who would, if he were living, have a right to institute a suit or make an application, dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased capable of instituting or making such suit or application.

(2) Where a person against whom, if he were living, a right to institute a suit or make an application would have accrued, dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased against whom the plaintiff may institute or make such suit or application.

(3) Nothing in sub-sections (1) and (2) applies to suits to enforce rights of pre-emption, or to suits for the possession of immoveable property or of an hereditary office.

18. Where any person having a right to institute a suit or make an application has, by means of fraud, been kept from the knowledge of such right or of the title on which it is founded,

or where any document necessary to establish such right has been fraudulently concealed from him,

the time limited for instituting a suit or making an application—

(a) against the person guilty of the fraud or accessory thereto, or

(b) against any person claiming through him otherwise than in good faith and for a valuable consideration,

shall be computed from the time when the fraud first became known to the person injuriously affected thereby, or, in the case of the concealed document, when he first had the means of producing it or compelling its production.

19. (1) Where, before the expiration of the period prescribed

Effect of acknowledgment in writing. for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by some person through whom he derives title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but, subject to the provisions of the Indian Evidence Act, 1872,* oral evidence of its contents shall not be received.

Explanation I.—For the purposes of this section an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance, or enjoyment has not yet come, or is accompanied by a refusal to pay, deliver, perform, or permit to enjoy, or is coupled with a claim to a set-off, or is addressed to a person other than the person entitled to the property or right.

Explanation II.—For the purposes of this section, “signed” means signed either personally or by an agent duly authorized in this behalf.

Explanation III.—For the purposes of this section an application for the execution of a decree or order is an application in respect of a right.

20. (1) Where interest on a debt or legacy is, before the

Effect of payment of interest as such or of part-payment of principal. expiration of the prescribed period, paid as such by the person liable to pay the debt or legacy, or by his agent duly authorized in this behalf,

* Act I. of 1872.

or where part of the principal of a debt is, before the expiration of the prescribed period, paid by the debtor or by his agent duly authorized in this behalf,

a fresh period of limitation shall be computed from the time when the payment was made :

Provided that, in the case of part-payment of the principal of a debt, the fact of the payment appears in the handwriting of the person making the same.

(2) Where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment for the purpose of sub-section (1).

Explanation.—Debt includes money payable under a decree or order of Court.

21. (1) The expression "agent duly authorized in this behalf," Agent of person under disability. in sections 19 and 20, shall, in the case of a person under disability, include his lawful guardian, committee, or manager, or an agent duly authorized by such guardian, committee, or manager to sign the acknowledgment or make the payment.

(2) Nothing in the said sections renders one of several joint contractors, partners, executors, or mortgagees chargeable by reason only of a written acknowledgment signed or of a payment made by, or by the agent of, any other or others of them.

22. (1) Where, after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party.

(2) Nothing in sub-section (1) shall apply to a case where a party is added or substituted owing to an assignment or devolution of any interest during the pendency of a suit, or where a plaintiff is made a defendant or a defendant is made a plaintiff.

23. In the case of a continuing breach of contract, and in the case of a continuing wrong independent of contract, a fresh period of limitation begins to run at every moment of the time during which the breach or the wrong, as the case may be, continues.

24. In the case of a suit for compensation for an act which does not give rise to a cause of action unless some specific injury actually results therefrom, the period of limitation shall be computed from the time when the injury results.

Illustration.

A owns the surface of a field. B owns the subsoil. B digs coal there-
out without causing any immediate apparent injury to the surface, but at
last the surface subsides. The period of limitation in the case of a suit by
A against B runs from the time of the subsidence.

25. All instruments shall, for the purposes of this Act, be deemed to be made with reference to the Gregorian calendar.

Illustrations.

(a.) A Hindu makes a promissory note bearing a Native date only, and payable four months after date. The period of limitation applicable to a suit on the note runs from the expiration of four months after date computed according to the Gregorian calendar.

(b.) A Hindu makes a bond, bearing a Native date only, for the repayment of money within one year. The period of limitation applicable to a suit on the bond runs from the expiration of one year after date computed according to the Gregorian calendar.

PART IV.

ACQUISITION OF OWNERSHIP BY POSSESSION.

26. (1) Where the access and use of light or air to and for any building have been peaceably enjoyed therewith as an easement, and as of right, without interruption, and for twenty years,

and where any way or watercourse, or the use of any water, or any other easement (whether affirmative or negative) has been peaceably and openly enjoyed by any person claiming title thereto as an easement and as of right without interruption, and for twenty years,

the right to such access and use of light or air, way, water-course, use of water, or other easement shall be absolute and indefeasible.

Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.

(2) Where the property over which a right is claimed under sub-section (1) belongs to Government, that sub-section shall be read as if, for the words "twenty years," the words "sixty years" were substituted.

Explanation.—Nothing is an interruption within the meaning of this section unless, where there is an actual discontinuance of the possession or enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof, and of the person making or authorizing the same to be made.

Illustrations.

(a.) A suit is brought in 1911 for obstructing a right of way. The defendant admits the obstruction, but denies the right of way. The plaintiff proves that the right was peaceably and openly enjoyed by him, claiming title thereto as an easement and as of right, without interruption from 1st January 1890 to 1st January 1910. The plaintiff is entitled to judgment.

(b.) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that the plaintiff, on one occasion during the twenty years, had asked his leave to enjoy the right. The suit shall be dismissed.

27. Where any land or water upon, over, or from which any

Exclusion in favour of easement has been enjoyed or derived
reversioner of servient tenement. has been held under or by virtue of any
interest for life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of such easement during the continuance of such interest or term shall be excluded in the computation of the period of twenty years in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled, on such determination, to the said land or water.

Illustration.

A sues for a declaration that he is entitled to a right of way over B's land. A proves that he has enjoyed the right for twenty-five years; but B shows that, during ten of these years, C, a Hindu widow, had a life-interest in the land; that, on C's death, B became entitled to the land, and that within two years after C's death he contested A's claim to the right. The suit must be dismissed, as A, with reference to the provisions of this section, has only proved enjoyment for fifteen years..

28. At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.

PART V.

SAVINGS AND REPEALS.

Savings.

29. (1) Nothing in this Act shall—

(a) affect the Indian Contract Act, 1872,* section 25:

(b) affect or alter any period of limitation specially prescribed for any suit, appeal, or application by any special or local law now or hereafter in force in British India.

(2) Nothing in this Act shall apply to suits under the Indian Divorce Act†

(3) Sections 26 and 27 and the definition of "easement" in section 2 shall not apply to cases arising in territories to which the Indian Easements Act, 1882,‡ may for the time being extend.

30. Notwithstanding anything herein contained, any suit for which the period of limitation prescribed by this Act is shorter than the period of limitation prescribed by the Indian Limitation Act, 1877,§ may be instituted within the period of two years next after the passing of this Act, or within the period prescribed for such suit by the Indian Limitation Act, 1877,§ whichever period expires first.

31. (1) Notwithstanding anything contained in this Act or in the Indian Limitation Act, 1877,§ in the territories mentioned in the second schedule, a suit for foreclosure or a suit for sale by a mortgagee may be instituted within two years from the date of the passing of this Act, or within sixty years from the date when the money secured by the mortgage became due, whichever period expires first; and no such suit in the said territories instituted within the said period of sixty years, and

* Act IX. of 1872.
† Act IV. of 1869.

‡ Act V. of 1882.
§ Act XV. of 1877.

pending, at the date of the passing of this Act, either in a Court of first instance or of appeal, shall be dismissed on the ground that a twelve years' rule of limitation is applicable.

(2) Where, in the aforesaid territories, the claim of a mortgagee for foreclosure or for sale has been wholly or in part dismissed or withdrawn after the twenty-second day of July 1907, and before the passing of this Act, either in a Court of first instance or of appeal, on the ground that a twelve years' rule of limitation applied to such claim, the case may be restored on an application in writing to the Court by which the claim was dismissed, or in which it was withdrawn, provided the application is made within six months from the date of the passing of this Act: and, on such restoration, the provisions of sub-section (1) shall apply.

32. The enactments mentioned in the third schedule are
Repeals. repealed to the extent specified in the
fourth column thereof.

THE FIRST SCHEDULE

(See section 3.)

FIRST DIVISION : SUITS.

Description of suit	Period of limitation.	Time from which period begins to run
1.—To contest an award of the Board of Revenue under the Waste Lands (Claims) Act, 1863.*	<i>Part I.— Thirty days</i>	When notice of the award is delivered to the plaintiff.
	Thirty days	
2.—For compensation for doing or for omitting to do an act alleged to be in pursuance of any enactment in force for the time being in British India.	<i>Part II.— Ninety days</i>	When the act or omission takes place
	Ninety days	
3.—Under the Specific Relief Act, 1877,† section 9, to recover possession of immoveable property.	<i>Part III.— Six months</i>	When the dispossession occurs
	Six months	
4.—Under the Employers and Workmen (Disputes) Act, 1860,‡ section 1.	Ditto ...	When the wages, hire or price of work claimed accrue or accrues due
5.—Under the summary procedure referred to in section 128 (2) (f) of the Code of Civil Procedure, 1908 §	Ditto ...	When the debt or liquidated demand becomes payable, or when the property becomes recoverable

* Act XXIII. of 1863.

† Act I. of 1877.

‡ Act IX of 1860

§ Act V. of 1908

THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part IV.— One year.</i>	
6.—Upon a Statute, Act, Regulation, or Bye-law, for a penalty or forfeiture.	One year ...	When the penalty or forfeiture is incurred.
7.—For the wages of a household servant, artisan, or labourer not provided for by this schedule, article 4.	Ditto ...	When the wages accrue due
8.—For the price of food or drink sold by the keeper of a hotel, tavern, or lodging-house.	Ditto ...	When the food or drink is delivered.
9.—For the price of lodging ...	Ditto ...	When the price becomes payable.
10.—To enforce a right of pre-emption, whether the right is founded on law, or general usage, or on special contract.	Ditto ...	When the purchaser takes, under the sale sought to be impeached, physical possession of the whole of the property sold, or, where the subject of the sale does not admit of physical possession, when the instrument of sale is registered.
11.—By a person, against whom any of the following orders has been made to establish the right which he claims to the property comprised in the order :	Ditto ...	The date of the order.

THE FIRST SCHEDULE—*contd.*FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run
<p>(1) Order under the Code of Civil Procedure, 1908,* on a claim preferred to, or an objection made to the attachment of, property attached in execution of a decree,</p> <p>(2) Order under section 28 of the Presidency Small Cause Courts Act, 1882.†</p> <p>11A.—By a person against whom an order has been made under the Code of Civil Procedure, 1908,* upon an application by the holder of a decree for the possession of immovable property, or by the purchaser of such property sold in execution of a decree, complaining of resistance or obstruction to the delivery of possession thereof, or upon an application by any person dispossessed of such property in the delivery of possession thereof to the decree-holder or purchaser, to establish the right which he claims to the present possession of the property comprised in the order.</p>	<p><i>Part IV— One year— contd.</i></p> <p>One year ...</p>	<p>The date of the order.</p>

* Act V. of 1908.

† Act XV. of 1882

THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
<p>12.—To set aside any of the following sales :—</p> <p>(a) sale in execution of a decree of a Civil Court ,</p> <p>(b) sale in pursuance of a decree or order of a Collector or other officer of revenue ,</p> <p>(c) sale for arrears of Government revenue, or for any demand recoverable as such arrears ;</p> <p>(d) sale of a patni taluq sold for current arrears of rent</p> <p><i>Explanation</i> —In this article " patni " includes any intermediate tenure saleable for current arrears of rent.</p>	<p><i>Part IV.—</i> <i>One year—</i> <i>contd.—</i></p> <p>One year ...</p>	<p>When the sale is confirmed, or would otherwise have become final and conclusive had no such suit been brought.</p>
<p>13.—To alter or set aside a decision or order of a Civil Court in any proceeding other than a suit.</p>	<p>Ditto ...</p>	<p>The date of the final decision or order in the case by a Court competent to determine it finally,</p>
<p>14.—To set aside any act or order of an officer of Government in his official capacity, not herein otherwise expressly provided for.</p>	<p>Ditto ...</p>	<p>The date of the act or order.</p>

THE FIRST SCHEDULE—*contd.*FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part IV— One year— contd.</i>	
15.—Against Government to set aside any attachment, lease, or transfer of immoveable property by the revenue-authorities for arrears of Government revenue.	One year ...	When the attachment, lease, or transfer is made.
16.—Against Government to recover money paid under protest in satisfaction of a claim made by the revenue-authorities on account of arrears of revenue, or on account of demands recoverable as such arrears	Ditto ...	When the payment is made.
17.—Against Government for compensation for land acquired for public purposes.	Ditto ...	The date of determining the amount of the compensation
18.—Like suit for compensation when the acquisition is not completed.	Ditto ...	The date of the refusal to complete.
19.—For compensation for false imprisonment.	Ditto ...	When the imprisonment ends.
20.—By executors, administrators, or representatives under the Legal Representatives' Suits Act, 1855 *	Ditto ...	The date of the death of the person wronged.
21.—By executors, administrators, or representatives under the Indian Fatal Accidents Act, 1855 †	Ditto ...	The date of the death of the person killed.

* Act XII. of 1855.

† Act XIII. of 1855.

THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part IV.— One year— contd.</i>	
22.—For compensation for any other injury to the person.	One year ...	When the injury is committed.
23.—For compensation for a malicious prosecution.	Ditto ...	When the plaintiff is acquitted or the prosecution is otherwise terminated.
24.—For compensation for libel ...	Ditto ...	When the libel is published.
25.—For compensation for slander.	Ditto ...	When the words are spoken or, if the words are not actionable in themselves, when the special damage complained of results.
26.—For compensation for loss of service occasioned by the seduction of the plaintiff's servant or daughter.	Ditto ...	When the loss occurs.
27.—For compensation for inducing a person to break a contract with the plaintiff.	Ditto ...	The date of the breach.
28.—For compensation for an illegal, irregular, or excessive distress.	Ditto ...	The date of the distress.
29.—For compensation for wrongful seizure of moveable property under legal process.	Ditto ...	The date of the seizure.

THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part IV.— One year— contd.</i>	
30.—Against a carrier for compensation for losing or injuring goods.	One year ...	When the loss or injury occurs.
31.—Against a carrier for compensation for non-delivery of, or delay in delivering, goods.	Ditto ...	When the goods ought to be delivered.
	<i>Part V.—Two years.</i>	
32.—Against one who, having a right to use property for specific purposes, perverts it to other purposes.	Two years.	When the perversion first becomes known to the person injured thereby.
33.—Under the Legal Representatives' Suits Act, 1855,* against an executor.	Ditto ...	When the wrong complained of is done.
34.—Under the same Act* against an administrator.	Ditto ...	Ditto.
35.—Under the same Act* against any other representative.	Ditto ...	Ditto.
36.—For compensation for any malfeasance, misfeasance, or non-feasance independent of contract, and not herein specially provided for.	Ditto ...	When the malfeasance, misfeasance, or non-feasance takes place.

* Act XII. of 1855.

THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI.— Three years.</i>	
37.—For compensation for obstructing a way or a watercourse.	Three years.	The date of the obstruction.
38.—For compensation for diverting a water-course.	Ditto ...	The date of the diversion.
39.—For compensation for trespass upon immoveable property.	Ditto ...	The date of the trespass.
40.—For compensation for infringing copyright or any other exclusive privilege.	Ditto ...	The date of the infringement.
41.—To restrain waste... ..	Ditto ...	When the waste begins.
42.—For compensation for injury caused by an injunction wrongfully obtained.	Ditto ...	When the injunction ceases.
43.—Under the Indian Succession Act, 1865,* section 320 or section 321, or under the Probate and Administration Act, 1881,† section 139 or section 140, to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets.	Ditto ...	The date of the payment or distribution.

* Act X. of 1865.

† Act V. of 1881.

THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI.— Three years— contd.</i>	
44.—By a ward who has attained majority to set aside a transfer of property by his guardian.	Three years.	When the ward attains majority.
45.—To contest an award under any of the following Regulations of the Bengal Code.— The Bengal Land-revenue Settlement Regulation, 1822 * The Bengal Land-revenue Settlement Regulation, 1825 † The Bengal Land revenue (Settlement and Deputy Collectors) Regulation, 1833. ‡	Ditto ...	The date of the final award or order in the case.
46.—By a party bound by such award to recover any property comprised therein.	Ditto ...	Ditto.
47.—By any person bound by an order respecting the possession of immoveable property made under the Code of Criminal Procedure, 1898, § or the Mamlatdars' Courts Act, 1906, § or by any one claiming under such person, to recover the property comprised in such order.	Ditto ...	The date of the final order in the case.

* Ben. Reg. VII. of 1822; † Ben. Reg. IX. of 1825.
 ‡ Ben. Reg. IX. of 1825. § Act V of 1898. ¶ Bom. Act II of 1906

THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI— Three years— contd.</i>	
48.—For specific moveable property lost, or acquired by theft, or dishonest misappropriation or conversion, or for compensation for wrongfully taking or detaining the same	Three years.	When the person having the right to the possession of the property first learns in whose possession it is.
49.—For other specific moveable property, or for compensation for wrongfully taking or injuring or wrongfully detaining the same.	Ditto ...	When the property is wrongfully taken or injured, or when the detainer's possession becomes unlawful.
50.—For the hire of animals, vehicles, boats, or house-hold furniture.	Ditto ...	When the hire becomes payable.
51.—For the balance of money advanced in payment of goods to be delivered.	Ditto ...	When the goods ought to be delivered.
52.—For the price of goods sold and delivered, where no fixed period of credit is agreed upon.	Ditto ...	The date of the delivery of the goods.
53.—For the price of goods sold and delivered to be paid for after the expiry of a fixed period of credit.	Ditto ...	When the period of credit expires.
54.—For the price of goods sold and delivered to be paid for by a bill of exchange, no such bill being given.	Ditto ...	When the period of the proposed bill elapses.

THE FIRST SCHEDULE—*contd.*First Division: Suits—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI— Three years —contd.</i>	
55.—For the price of trees or growing crops sold by the plaintiff to the defendant where no fixed period of credit is agreed upon.	Three years.	The date of the sale.
56.—For the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment.	Ditto ...	When the work is done.
57.—For money payable for money lent.	Ditto ...	When the loan is made.
58.—Like suit when the lender has given a cheque for the money.	Ditto ...	When the cheque is paid.
59.—For money lent under an agreement that it shall be payable on demand.	Ditto ...	When the loan is made.
60.—For money deposited under an agreement that it shall be payable on demand, including money of a customer in the hands of his banker so payable.	Ditto ...	When the demand is made.
61.—For money payable to the plaintiff for money paid for the defendant.	Ditto ...	When the money is paid.

THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI.— Three years— contd.</i>	
62.—For money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use.	Three years.	When the money is received.
63.—For money payable for interest upon money due from the defendant to the plaintiff.	Ditto ...	When the interest becomes due.
64.—For money payable to the plaintiff for money found to be due from the defendant to the plaintiff on accounts stated between them.	Ditto ...	When the accounts are stated in writing signed by the defendant or his agent duly authorized in this behalf, unless where the debt is, by a simultaneous agreement in writing signed as aforesaid, made payable at a future time, and then when that time arrives.
65.—For compensation for breach of a promise to do anything at a specified time, or upon the happening of a specified contingency.	Ditto ...	When the time specified arrives or the contingency happens.
66.—On a single bond, where a day is specified for payment.	Ditto ...	The day so specified.
67.—On a single bond, where no such day is specified.	Ditto ...	The date of executing the bond.

THE FIRST SCHEDULE—*contd.*FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI.— Three years— contd.</i>	
68.—On a bond subject to a condition.	Three years	When the condition is broken.
69.—On a bill of exchange or promissory note payable at a fixed time after date.	Ditto ...	When the bill or note falls due.
70.—On a bill of exchange payable at sight, or after sight, but not at a fixed time.	Ditto ...	When the bill is presented.
71.—On a bill of exchange accepted payable at a particular place.	Ditto ...	When the bill is presented at that place.
72.—On a bill of exchange or promissory note payable at a fixed time after sight or after demand.	Ditto ...	When the fixed time expires.
73.—On a bill of exchange or promissory note payable on demand and not accompanied by any writing restraining or postponing the right to sue.	Ditto ...	The date of the bill or note.
74.—On a promissory note or bond payable by instalments.	Ditto ...	The expiration of the first term of payment as to the part then payable, and for the other parts, the expiration of the respective terms of payment.

THE FIRST SCHEDULE—*contd.*FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI— Three years— contd.</i>	
75.—On a promissory note or bond payable by instalments, which provides that, if default be made in payment of one or more instalments, the whole shall be due.	Three years.	When the default is made, unless where the payee or obligee waives the benefit of the provision, and then when fresh default is made in respect of which there is no such waiver.
76.—On a promissory note given by the maker to a third person to be delivered to the payee after a certain event should happen.	Ditto ...	The date of the delivery to the payee.
77.—On a dishonoured foreign bill, where protest has been made and notice given.	Ditto ...	When the notice is given.
78.—By the payee against the drawer of a bill of exchange, which has been dishonoured by non-acceptance.	Ditto ...	The date of the refusal to accept.
79.—By the acceptor of an accommodation-bill against the drawer.	Ditto ...	When the acceptor pays the amount of the bill.
80.—Suit on a bill of exchange, promissory note, or bond not herein expressly provided for.	Ditto ...	When the bill, note, or bond becomes payable.
81.—By a surety against the principal debtor.	Ditto ...	When the surety pays the creditor.

THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI— Three years— contd.</i>	
82.—By a surety against a co-surety.	Three years.	When the surety pays anything in excess of his own share.
83.—Upon any other contract to indemnify.	Ditto ...	When the plaintiff is actually damaged.
84.—By an attorney or vakil for his costs of a suit or a particular business, there being no express agreement as to the time when such costs are to be paid.	Ditto ...	The date of the termination of the suit or business, or (where the attorney or vakil properly discontinues the suit or business) the date of such discontinuance.
85.—For the balance due on a mutual, open, and current account, where there have been reciprocal demands between the parties.	Ditto ...	The close of the year in which the last item admitted or proved is entered in the account, such year to be computed as in the account.
86.—On a policy of insurance, when the sum assured is payable immediately after proof of the death or loss has been given to or received by the insurers.	Ditto ...	When proof of the death or loss is given or received to or by the insurer, whether by or from the plaintiff or any other person.
87.—By the assured to recover premia paid under a policy voidable at the election of the insurers.	Ditto ...	When the insurers elect to avoid the policy.

THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI— Three years— contd.</i>	
88.—Against a factor for an account.	Three years.	When [the account is, during the continuance of the agency, demanded and refused, or, where no such demand is made, when the agency terminates.
89.—By a principal against his agent for moveable property received by the latter and not accounted for.	Ditto ...	Ditto.
90.—Other suits by principals against agents for neglect or misconduct.	Ditto ...	When the neglect or misconduct becomes known to the plaintiff.
91.—To cancel or set aside an instrument not otherwise provided for.	Ditto ...	When the facts entitling the plaintiff to have the instrument cancelled or set aside become known to him.
92.—To declare the forgery of an instrument issued or registered.	Ditto ...	When the issue or registration becomes known to the plaintiff.
93.—To declare the forgery of an instrument attempted to be enforced against the plaintiff.	Ditto ...	The date of the attempt.

THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI.— Three years— contd</i>	
94.—For property which the plaintiff has conveyed while insane.	Three years.	When the plaintiff is restored to sanity, and has knowledge of the conveyance.
95.—To set aside a decree obtained by fraud or for other relief on the ground of fraud.	Ditto ...	When the fraud becomes known to the party wronged
96.—For relief on the ground of mistake,	Ditto ...	When the mistake becomes known to the plaintiff
97.—For money paid upon an existing consideration which afterwards fails.	Ditto ...	The date of the failure.
98.—To make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust.	Ditto ...	The date of the trustee's death, or if the loss has not then resulted, the date of the loss.
99.—For contribution by a party who has paid the whole or more than his share of the amount due under a joint decree, or by a sharer in a joint estate who has paid the whole or more than his share of the amount of revenue due from himself and his co-sharers.	Ditto ...	The date of the payment in excess of the plaintiff's own share.

THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI — Three years— contd</i>	
100.—By a co-trustee to enforce against the estate of a deceased trustee a claim for contribution.	Three years	When the right to contribution accrues.
101.—For a seaman's wages ...	Ditto ...	The end of the voyage during which the wages are earned.
102.—For wages not otherwise expressly provided for by this schedule	Ditto ...	When the wages accrue due.
103.—By a Muhammadan for exigible dower (<i>mu'ajjal</i>)	Ditto ...	When the dower is demanded and refused or (where, during the continuance of the marriage, no such demand has been made) when the marriage is dissolved by death or divorce.
104.—By a Muhammadan for deferred dower (<i>muwajjal</i>).	Ditto ...	When the marriage is dissolved by death or divorce.
105.—By a mortgagor after the mortgage has been satisfied, to recover surplus collections received by the mortgagee.	Ditto ...	When the mortgagor re enters on the mortgaged property.
106.—For an account and a share of the profits of a dissolved partnership.	Ditto ...	The date of the dissolution.

THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI.— Three years— contd</i>	
107.—By the manager of a joint estate of an undivided family for contribution in respect of a payment made by him on account of the estate.	Three years	The date of the payment
108.—By a lessor for the value of trees cut down by his lessee contrary to the terms of the lease.	Ditto ...	When the trees are cut down.
109.—For the profits of immoveable property belonging to the plaintiff which have been wrongfully received by the defendant.	Ditto ...	When the profits are received
110.—For arrears of rent ...	Ditto ...	When the arrears become due.
111.—By a vendor of immoveable property for personal payment of unpaid purchase-money.	Ditto ...	The time fixed for completing the sale, or (where the title is accepted after the time fixed for completion) the date of the acceptance.
112.—For a call by a company registered under any Statute or Act.	Ditto ...	When the call is payable.

THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*contd.*

Description of suit	Period of limitation	Time from which period begins to run.
	<i>Part VI — Three years— concid.</i>	
113.—For specific performance of a contract.	Three years.	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.
114.—For the rescission of a contract.	Ditto ...	When the facts entitling the plaintiff to have the contract rescinded first become known to him.
115.—For compensation for the breach of any contract, express or implied, not in writing registered, and not herein specially provided for.	Ditto ...	When the contract is broken, or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs, or (where the breach is continuing) when it ceases.
	<i>Part VII.— Six years.</i>	
116.—For compensation for the breach of a contract in writing registered.	Six years ...	When the period of limitation would begin to run against a suit brought on a similar contract not registered.

THE FIRST SCHEDULE—*contd.*FIRST DIVISION : SUITS—*contd.*

Description of suit	Period of limitation.	Time from which period begins to run
<p>117.—Upon a foreign judgment as defined in the Code of Civil Procedure, 1908 *</p> <p>118.—To obtain a declaration that an alleged adoption is invalid, or never, in fact, took place</p> <p>119.—To obtain a declaration that an adoption is valid.</p> <p>120.—Suit for which no period of limitation is provided elsewhere in this schedule.</p>	<i>Part VII.— Six years— contd.</i>	
	Six years ...	The date of the judgment
	Ditto ...	When the alleged adoption becomes known to the plaintiff.
	Ditto ...	When the rights of the adopted son, as such, are interfered with
	Ditto ...	When the right to sue accrues.
	<i>Part VIII— Twelve years</i>	
	Twelve years	When the sale becomes final and conclusive.
	Ditto ...	The date of the judgment or recognisance.

* Act V. of 1908.

THE FIRST SCHEDULE—*contd.*FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VIII.— Twelve years —contd</i>	
123.—For a legacy or for a share of a residue bequeathed by a testator, or for a distributive share of the property of an intestate.	Twelve years	When the legacy or share becomes payable or deliverable.
124.—For possession of an hereditary office.	Ditto ...	<p>When the defendant takes possession of the office adversely to the plaintiff.</p> <p><i>Explanation :—</i> An hereditary office is possessed when the profits thereof are usually received, or (if there are no profits) when the duties thereof are usually performed.</p>
125.—Suit during the life of a Hindu or Muhammadan female by a Hindu or Muhammadan who, if the female died at the date of instituting the suit, would be entitled to the possession of land, to have an alienation of such land made by the female declared to be void except for her life or until her re-marriage.	Ditto ...	The date of the alienation
126.—By a Hindu governed by the law of the Mitakshara to set aside his father's alienation of ancestral property.	Ditto ...	When the alienee takes possession of the property.

THE FIRST SCHEDULE—*contd.*FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VIII— Twelve years. —contd</i>	
127.—By a person excluded from joint family-property, to enforce a right to share therein	Twelve years	When the exclusion becomes known to the plaintiff.
128.—By a Hindu for arrears of maintenance.	Ditto ...	When the arrears are payable.
129.—By a Hindu for a declaration of his right to maintenance	Ditto ...	When the right is denied.
130.—For the resumption or assessment of rent-free land.	Ditto ...	When the right to resume or assess the land first accrues
131.—To establish a periodically-recurring right.	Ditto ...	When the plaintiff is first refused the enjoyment of the right.
132.—To enforce payment of money charged upon immoveable property.	Ditto ...	When the money sued for becomes due.
<i>Explanation</i> —The allowance and fees respectively called <i>mahikana</i> and <i>hagga</i> shall, for the purpose of this article, be deemed to be money charged upon immoveable property.		
133.—To recover moveable property conveyed or bequeathed in trust, deposited or pawned, and afterwards bought from the trustee, depository, or pawnee for a valuable consideration.	Ditto ...	The date of the purchase

THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VIII.— Twelve years —contd</i>	
134.—To recover possession of immoveable property conveyed or bequeathed in trust or mortgaged and afterwards transferred by the trustee or mortgagee for a valuable consideration.	Twelve years.	The date of the transfer.
135.—Suit instituted in a Court not established by Royal Charter by a mortgagee for possession of immoveable property mortgaged.	Ditto ...	When the mortgagor's right to possession determines.
136.—By a purchaser at a private sale for possession of immoveable property sold when the vendor was out of possession at the date of the sale	Ditto ...	When the vendor is first entitled to possession.
137.—Like suit by a purchaser at a sale in execution of a decree, when the judgment-debtor was out of possession at the date of the sale.	Ditto ...	When the judgment-debtor is first entitled to possession.
138.—Like suit by a purchaser at a sale in execution of a decree, when the judgment-debtor was in possession at the date of the sale.	Ditto ...	The date when the sale becomes absolute.
139.—By a landlord to recover possession from a tenant.	Ditto ...	When the tenancy is determined.

THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VIII — Twelve years. —concl.</i>	
140.—By a remainderman, a reversioner (other than a landlord), or a devisee, for possession of immoveable property.	Twelve years.	When his estate falls into possession.
141.—Like suit by a Hindu or Muhammadan entitled to the possession of immoveable property on the death of a Hindu or Muhammadan female	Ditto ...	When the female dies
142.—For possession of immoveable property when the plaintiff, while in possession of the property, has been dispossessed or has discontinued the possession.	Ditto ...	The date of the dispossession or discontinuance.
143.—Like suit, when the plaintiff has become entitled by reason of any forfeiture or breach of condition.	Ditto ...	When the forfeiture is incurred or the condition is broken.
144.—For possession of immoveable property or any interest therein not hereby otherwise specially provided for	Ditto ...	When the possession of the defendant becomes adverse to the plaintiff
	<i>Part IX — Thirty years</i>	
145.—Against a depositary or pawnee to recover moveable property deposited or pawned	Thirty years	The date of the deposit or pawn.

THE FIRST SCHEDULE—*contd.*

FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
<p>146.—Before a Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction by mortgagee to recover from the mortgagor the possession of immoveable property mortgaged.</p> <p>146A —By or on behalf of any local authority for possession of any public street or road or any part thereof from which it has been dispossessed or of which it has discontinued the possession.</p>	<p><i>Part IX.— Thirty years —contd.</i></p>	
	Thirty years.	When any part of the principal or interest was last paid on account of the mortgage-debt.
	Ditto ...	The date of the dis-possession or discontinuance
<p>147.—By a mortgagee for foreclosure or sale</p> <p>148.—Against a mortgagee to redeem or to recover possession of immoveable property mortgaged</p>	<p><i>Part X — Sixty years.</i></p>	
	Sixty years ...	When the money secured by the mortgage becomes due.
	Ditto ...	<p>When the right to redeem or to recover possession accrues :</p> <p>Provided that all claims to redeem arising under instruments of mortgage of immoveable property situate in Lower Burma which had been executed</p>

THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*concl'd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
148.— <i>Continued</i>	<i>Part X.— Sixty years. cont'd.</i>	before the first day of May 1863, shall be governed by the rules of limitation in force in that province immediately before the same day.
149.—Any suit by or on behalf of the Secretary of State for India in Council.	Sixty years	When the period of limitation would begin to run under this Act against a like suit by a private person.

THE FIRST SCHEDULE—*contd.*

SECOND DIVISION : APPEALS.

Description of appeal.	Period of limitation.	Time from which period begins to run.
150.—Under the Code of Criminal Procedure, 1898,* from a sentence of death passed by a Court of Session	Seven days.	The date of the sentence
151.—From a decree or order of any of the High Courts of Judicature at Fort William, Madras, and Bombay or the Chief Court of the Punjab or the Chief Court of Lower Burma in the exercise of its original jurisdiction.	Twenty days.	The date of the decree or order.
152.—Under the Code of Civil Procedure, 1908,† to the Court of a District Judge.	Thirty days.	The date of the decree or order appealed from
153.—Under the same Code,† to a High Court from an order of a Subordinate Court refusing leave to appeal to His Majesty in Council.	Ditto ...	The date of the order.
154.—Under the Code of Criminal Procedure, 1898,* to any Court other than a High Court.	Ditto ...	The date of the sentence or order appealed from.
155.—Under the same Code,* to a High Court, except in the cases provided for by article 150 and article 157.	Sixty days...	Ditto.

* Act V. of 1898.

† Act V. of 1908.

THE FIRST SCHEDULE—*contd.*SECOND DIVISION : APPEALS—*contd.*

Description of appeal.	Period of limitation.	Time from which period begins to run.
156.—Under the Code of Civil Procedure, 1908,* to a High Court, except in the cases provided for by article 151 and article 153.	Ninety days	The date of the decree or order appealed from.
157.—Under the Code of Criminal Procedure, 1898,† from an order of acquittal.	Six months	The date of the order appealed from.

* Act V. of 1898.

† Act V. of 1908.

THE FIRST SCHEDULE—*contd.*

THIRD DIVISION : APPLICATIONS.

Description of application.	Period of limitation.	Time from which period begins to run.
158.—Under the Code of Civil Procedure, 1908,* to set aside an award.	Ten days ...	When the award is submitted to the Court.
159.—For leave to appear and defend a suit under the summary procedure referred to in section 128 (2) (f) of the same Code *	Ditto ...	When the summons is served
160.—For an order under the same Code,* to restore to the file an application for review rejected in consequence of the failure of the applicant to appear when the application was called on for hearing.	Fifteen days.	When the application or review is rejected.
161.—For a review of judgment by a Provincial Court of Small Causes, or by a Court invested with the jurisdiction of a Provincial Court of Small Causes when exercising that jurisdiction.	Ditto ...	The date of the decree or order,
162.—For a review of judgment by any of the High Courts of Judicature at Fort William, Madras, and Bombay or the Chief Court of the Punjab, or the Chief Court of Lower Burma in the exercise of its original jurisdiction.	Twenty days.	Ditto.

* Act V. of 1908.

THE FIRST SCHEDULE—*contd.*THIRD DIVISION: APPLICATIONS—*contd.*

Description of application	Period of limitation.	Time from which period begins to run.
163.—By a plaintiff, for an order to set aside a dismissal for default of appearance, or for failure to pay costs of service of process, or to furnish security for costs	Thirty days.	The date of the dismissal.
164.—By a defendant, for an order to set aside a decree passed <i>ex parte</i> .	Ditto ...	The date of the decree on, where the summons was not duly served, when the applicant has knowledge of the decree.
165.—Under the Code of Civil Procedure, 1908,* by a person dispossessed of immoveable property, and disputing the right of the decree-holder or purchaser at a sale in execution of a decree to be put into possession.	Ditto ...	The date of the dispossession.
166.—Under the same Code* to set aside a sale in execution of a decree.	Ditto ...	The date of the sale
167.—Complaining of resistance or obstruction to delivery of possession of immoveable property decreed or sold in execution of a decree	Ditto ...	The date of the resistance or obstruction
168.—For the re-admission of an appeal dismissed for want of prosecution.	Ditto ...	The date of the dismissal.

* Act V. of 1908.

THE FIRST SCHEDULE—*contd.*THIRD DIVISION: APPLICATIONS—*contd.*

Description of application.	Period of limitation.	Time from which period begins to run.
169.—For the re-hearing of an appeal heard <i>ex parte</i> .	Thirty days	The date of the decree in appeal or, where notice of the appeal was not duly served, when the applicant has knowledge of the decree.
170.—For leave to appeal as a pauper.	Ditto ...	The date of the decree appealed from.
171.—Under the Code of Civil Procedure, 1908,* for an order to set aside an abatement.	Sixty days	The date of the abatement.
172.—Under the same Code* by the assignee or the receiver of an insolvent plaintiff or appellant for an order to set aside the dismissal of a suit or an appeal.	Ditto ...	The date of the order of dismissal.
173.—For a review of judgment except in the cases provided for by article 161 and article 162.	Ninety days	The date of the decree or order.
174.—For the issue of a notice under the same Code,* to show cause why any payment made out of Court of any money payable under a decree or any adjustment of the decree should not be recorded as certified	Ditto ...	When the payment or adjustment is made.
175.—For payment of the amount of a decree by instalments.	Six months.	The date of the decree.

* Act V. of 1908.

THE FIRST SCHEDULE—*contd.*THIRD DIVISION: APPLICATIONS—*contd.*

Description of application.	Period of limitation.	Time from which period begins to run.
176.—Under the same Code* to have the legal representative of a deceased plaintiff or of a deceased appellant made a party.	Six months	The date of the death of the deceased plaintiff or appellant.
177.—Under the same Code* to have the legal representative of a deceased defendant or of a deceased respondent made a party.	Ditto ...	The date of the death of the deceased defendant or respondent.
178.—Under the same Code* for the filing in Court of an award in a suit made in any matter referred to arbitration by order of the Court, or of an award made in any matter referred to arbitration without the intervention of a Court.	Ditto ...	The date of the award.
179.—By a person desiring to appeal under the same Code* to His Majesty in Council for leave to appeal.	Ditto ...	The date of the decree appealed from.
180.—By a purchaser of immovable property at a sale in execution of a decree for delivery of possession.	Three years	When the sale becomes absolute.
181.—Applications for which no period of limitation is provided elsewhere in this schedule or by section 48 of the Code of Civil Procedure, 1908.*	Ditto ...	When the right to apply accrues.

* Act V. of 1908.

THE FIRST SCHEDULE—*contd.*THIRD DIVISION: APPLICATIONS—*contd.*

Description of application.	Period of limitation.	Time from which period begins to run.
182.—For the execution of a decree or order of any Civil Court not provided for by article 183 or by section 48 of the Code of Civil Procedure, 1908.*	Three years; or, where a certified copy of the decree or order has been registered, six years.	<p>1. The date of the decree or order, or</p> <p>2 (where there has been an appeal) the date of the final decree or order of the Appellate Court, or the withdrawal of the appeal, or</p> <p>3. (where there has been a review of judgment) the date of the decision passed on the review, or</p> <p>4. (where the decree has been amended) the date of amendment, or</p> <p>5. (where the application next hereinafter mentioned has been made) the date of applying in accordance with law to the proper Court for execution, or to take some step in aid of execution, of the decree or order, or</p> <p>6. (where the notice next hereinafter mentioned has been issued) the date of issue</p>

* Act V. of 1908.

THE FIRST SCHEDULE—*contd.*THIRD DIVISION: APPLICATIONS—*contd.*

Description of application.	Period of limitation.	Time from which period begins to run.
<p>182.—For the execution of a decree or order of any Civil Court not provided for by article 183 or by section 48 of the Code of Civil Procedure, 1908*—<i>contd.</i></p>	<p>Three years; or, where a certified copy of the decree or order has been registered, six years (<i>ctd.</i>).</p>	<p>of notice to the person against whom execution is applied for to show cause why the decree should not be executed against him, when the issue of such a notice is required; [by the Code of Civil Procedure, 1908,* or</p> <p>7. (where the application is to enforce any payment which the decree or order directs to be made at a certain date) such date</p> <p><i>Explanation 1.</i>—Where the decree or order has been passed severally in favour of more persons than one, distinguishing portions of the subject-matter as payable or deliverable to each, the application mentioned in clause 5 of this article shall take effect in favour only of such of the said persons or their representatives as it may be made by. But, where the decree or</p>

* Act V. of 1908.

THE FIRST SCHEDULE—*contd.*THIRD DIVISION: APPLICATIONS—*contd.*

Description of application.	Period of limitation.	Time from which period begins to run.
<p>182.—For the execution of a decree or order of any Civil Court not provided for by article 183 or by section 48 of the Code of Civil Procedure, 1908*—<i>contd.</i></p>	<p>Three years; or, where a certified copy of the decree or order has been registered, six years (<i>etd.</i>).</p>	<p>order has been passed jointly in favour of more persons than one, such application, if made by any one or more of them, or by his or their representatives, shall take effect in favour of them all.</p> <p>Where the decree or order has been passed severally against more persons than one, distinguishing portions of the subject-matter as payable or deliverable by each, the application shall take effect against only such of the said persons or their representatives as it may be made against. But, where the decree or order has been passed jointly against more persons than one, the application, if made against any one or more of them, or against his or their representatives, shall take effect against them all.</p>

* Act V. of 1908.

THE FIRST SCHEDULE—*contd.*THIRD DIVISION: APPLICATIONS—*contd.*

Description of application	Period of limitation.	Time from which period begins to run.
<p>182.—For the execution of a decree or order of any Civil Court not provided for by article 183 or by section 48 of the Code of Civil Procedure, 1908*—<i>contd.</i></p>	<p>Three years, or, where a certified copy of the decree or order has been registered, six years (<i>old.</i>)</p>	<p><i>Explanation II.</i>— "Proper Court" means the Court whose duty it is to execute the decree or order.</p>
<p>183.—To enforce a judgment, decree, or order of any Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction, or an order of His Majesty in Council.</p>	<p>Twelve years.</p>	<p>When a present right to enforce the judgment, decree, or order accrues to some person capable of releasing the right</p> <p>Provided that, when the judgment, decree, or order has been revived, or some part of the principal money secured thereby, or some interest on such money has been paid, or some acknowledgment of the right thereto has been given in writing signed by the person liable to pay such principal or interest, or his agent, to the person entitled thereto or his agent, the</p>

* Act V. of 1908.

THE FIRST SCHEDULE—*concl'd.*THIRD DIVISION: APPLICATIONS—*concl'd.*

Description of application.	Period of limitation.	Time from which period begins to ran.
183.—To enforce a judgment, decree or order of any Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction, or an order of His Majesty in Council— <i>cont'd.</i>	Twelve years— <i>cont'd.</i>	twelve years shall be computed from the date of such revivor, payment, or acknowledgment, or the latest of such reviv- ors, payments, or acknowledgments, as the case may be.

THE SECOND SCHEDULE.**TERRITORIES REFERRED TO IN SECTION 31.**

(See section 31.)

The Presidency of Fort St. George.

The Presidency of Bombay.

**The Sambalpur District of the Bengal Division of the Presidency
of Fort William.**

The United Provinces of Agra and Oudh.

Burma.

The Central Provinces.

Ajmere-Merwara.

THE THIRD SCHEDULE.

ENACTMENTS REPEALED.

(See section 32.)

Year.	No.	Short title	Extent of repeal.
1877 ...	XV.	The Indian Limitation Act, 1877.	The whole.
1877 ...	XVII.	The Punjab Courts Act, 1877	So much as has not been repealed
1879 ...	XII.	The Registration and Limitation Acts Amendment Act, 1879.	In the title the words "and the Limitation Act, 1877," and after section 107, from the words "and whereas" to the end of the Act.
1881 ...	V.	The Probate and Administration Act, 1881.	Section 156
1887 ...	IX.	The Provincial Small Cause Courts Act, 1887.	Section 36.
1888 ...	VII.	The Civil Procedure Code Amendment Act, 1888.	In the title and in the preamble, the words, "and the Indian Limitation Act, 1877," and of section 66 so much as has not been repealed.
1892 ...	VI.	The Indian Limitation Act and Civil Procedure Code Amendment Act, 1892.	In the title and in the preamble, the words "the Indian Limitation Act, 1877," and section 1.
1899 ...	X.	The Carriers Act, 1899.	Section 3.
1900 ...	VI.	The Lower Burma Courts Act, 1900	So much of section 47 and the first schedule as relates to the Indian Limitation Act, 1877.
1900 ...	XI.	The Indian Limitation Amendment Act, 1900.	The whole.
1906 ...	IV.	The Presidency Small Cause Courts Act, 1906.	Section 5.

1. [Repeals.] *Repealed by the Repealing Act (XIV. of 1870).*

2. Whenever any person not subject to the jurisdiction of the Supreme Courts, who is possessed of property, is alleged to be a lunatic, the Power to institute enquiry when possessor of property is alleged to be lunatic Civil Court, within whose jurisdiction such person is residing,[†] may, upon such application as is herein-after mentioned, institute an enquiry for the purpose of ascertaining whether such person is or is not of unsound mind and incapable of managing his affairs.

3. Application for such enquiry[†] may be made by any re- Who may apply for en- lative of the alleged lunatic, or by any public curator appointed under Act XIX. of 1841, or by the Government pleader, or, if the property of the alleged lunatic consist, in whole or in part, of land or any interest in land, by the Collector of the district in which it is situate.

If the property or any part thereof be of such a description as, by the law in force in any presidency where such property is situate, would subject the proprietor, if disqualified, to the superin-

(5) Jaunsar Bawar (see *Gazette of India*, 1879, Pt. I, p. 382)

(6) The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, and Dera Ghazi Khan (see *Gazette of India*, 1886, Pt. I, p. 48)

(7) The District of Lahaul (see *Gazette of India*, 1886, Pt. I, p. 301) -

(8) The Scheduled Districts of the Central Provinces (see *Gazette of India*, 1879, Pt. I, p. 771) -

(9) The District of Sylhet (see *Gazette of India*, 1879, Pt. I, p. 631)

(10) The Districts of Kamrup, Naugong, Darrang, Sibsagar, Lakhimpur, Goalpara (excluding the Eastern Duars), and Cachar (excluding the North Cachar Hills) (see *Gazette of India*, 1878, Pt. I, p. 533)

(11) The Porahat Estate in the Singbhum District (see *Gazette of India*, 1897, Pt. I, p. 1059)

It has also been extended, by notification under s 5 of the last-mentioned Act, to the following Scheduled Districts, namely -

(1) Kumaon and Garhwal (see *Gazette of India*, 1876, Pt. I, p. 606)

(2) The North-Western Provinces Tarai (see *Gazette of India*, 1876, Pt. I, p. 505) -

(3) Ajmere and Merwara (see *Gazette of India*, 1878, Pt. I, p. 380)

* 2 B L R., A C. J., 246.

† The application must be verified.—7 Suth W. R., C. R., 267

tendence of the Court of Wards, the application may be made by the Collector on behalf of the Court of Wards.

4. When the Civil Court is about to institute any such enquiry as aforesaid, it shall cause notice to be given to the alleged lunatic of the time and place at which it is proposed to hold the enquiry. If it shall appear that the alleged lunatic is in such a state that personal service on him would be ineffectual, the Court may direct such substituted service of the notice as it shall think proper. The Court may also direct a copy of such notice to be served upon any relative of the alleged lunatic.

5. The Civil Court may require the alleged lunatic to attend at such convenient time and place as it may appoint for the purpose of being personally examined by the Court or by any person from whom the Court may desire to have a report of the mental capacity and condition of such alleged lunatic.*

The Court may likewise make an order authorizing any person or persons therein named to have access to the alleged lunatic for the purpose of a personal examination.

6. The attendance and examination of the alleged lunatic under the provisions of the last-mentioned section shall, if the alleged lunatic be a woman who, according to the manners and customs of the country, ought not to be compelled to appear in public, be regulated by the rules in force for the examination of such persons in other cases.

7. The Civil Court, if it think fit, may appoint two or more persons to act as assessors to the Court in the said enquiry.

Upon the completion of the enquiry, the Court shall determine whether the alleged lunatic is or is not of unsound mind, and may make such order as to the payment of the costs of the enquiry by the person upon whose application it was made, or out of the estate of the alleged lunatic if he be adjudged to be of unsound mind, or otherwise, as it may think proper.

* See 7 South. W. R., C. R., 246.

8. If the alleged lunatic reside at a distance of more than fifty miles from the place where the subordinate Court. Civil Court to which the application shall have been made is held, the said Court may issue a commission to any subordinate Court to make the enquiry, and thereupon the said subordinate Court shall conduct the enquiry in the manner hereinbefore provided.

On the completion of the enquiry, the subordinate Court shall report its proceedings with the opinions of the assessors, if assessors have been appointed, and its own opinion on the case; and thereupon the Civil Court shall make such order in the case as it may think proper.*

9. When a person has been adjudged to be of unsound mind and incapable of managing his affairs, the estate of such person or any part thereof consist of property which, by the law in force in any presidency, subjects the proprietor, if disqualified, to the superintendence of the Court of Wards, the Court of Wards shall be authorized to take charge of the same.

In all other cases, except as otherwise hereinafter provided, the Civil Court shall appoint a manager of the estate. Any near relative of the lunatic, or the public curator, or, if there be no public curator, any other suitable person, may be appointed manager.†

10. Whenever a manager of the estate of a lunatic is appointed by the Civil Court, the Court shall appoint a fit person to be guardian of the person of the lunatic. The manager, unless he be the public curator, may be appointed guardian: Provided always that the legal heir of the lunatic shall not in any case be appointed guardian of his person.

* The Act contemplates only the question of lunacy or sanity at the time of the enquiry. There is no provision that the enquiry shall extend to the ascertainment of the period at which the alleged lunatic first became of unsound mind—*Ajadhya Prasad Singh v. Umrao Singh*, 6 B. L. R. 509 (517).

† See 4 B. L. R., App., 24.

11.* If the estate consist, in whole or in part, of land or any interest in land not subject to the jurisdiction of the Court of Wards, the Civil Court, instead of appointing a manager, may direct the Collector to take charge of the estate, and thereupon the Collector shall appoint a manager of the property, and a guardian of the person, of the lunatic.

All the proceedings of the Collector in the charge of estates under this Act shall be subject to the control of the superior revenue-authorities.

12.† If the person appointed to be manager of the estate of a lunatic, or the person appointed to be guardian of a lunatic's person, shall be unwilling to discharge the trust gratuitously, the Court or the Collector, as the case may be, may fix such allowance or allowances to be paid out of the estate of the lunatic as, under the circumstances of the case, may be thought suitable.

13. The person appointed to be guardian of a lunatic's person shall have the care of his person and maintenance. When a distinct guardian is appointed, the manager shall pay to the guardian such allowance as shall be fixed by the Court or the Collector, as the case may be, for the maintenance of the lunatic and of his family.

14. Every manager of the estate of a lunatic appointed as aforesaid may exercise the same powers in the management of the estate as might have been exercised by the proprietor if not a lunatic, and may collect and pay all just claims, debts, and liabilities due to or by the estate of the lunatic. But no such manager shall have power to sell or mortgage the estate or any part thereof, or to grant a lease of any immoveable property for any period exceeding five years, without an order of the Civil Court previously obtained.

* S 11 has been repealed in the Lower Provinces of Bengal by the Bengal Court of Wards Act (Ben Act IX of 1879), s. 2.

† Ss. 12 to 19 (both inclusive) do not apply to persons or properties under the charge of the Court of Wards in the Lower Provinces of Bengal. —See the Bengal Court of Wards Act (Ben. Act IX. of 1879), s. 10.

15. Every person appointed by the Civil Court or by the Managers to furnish inventory and annual accounts to the Collector to be manager of the estate of a lunatic shall, within six months from the date of his appointment, deliver in Court or to the Collector, as the case may be, an inventory of the landed property belonging to the lunatic, and of all such sums of money, goods, and effects, as he shall receive on account of the estate, together with a statement of all debts due by or to the same. And every such manager shall furnish to the Court or to the Collector annually, within three months of the close of the year of the era current in the district, an account of the property in his charge, exhibiting the sums received and disbursed on account of the estate, and the balance remaining in his hands.

If any relative of the lunatic, or any public officer, by petition Proceeding if accuracy of inventory or accounts be impugned to the Court, shall impugn the accuracy of the said inventory and statement, or of any annual account, the Court may summon the manager and enquire summarily into the matter, and make such order thereon as it shall think proper, or the Court, at its discretion, may refer any such petition to any subordinate Court or to the Collector if the manager was appointed by the Collector.

16. All sums received by a manager on account of any estate in excess of what may be required Manager to pay proceeds of estates into the public treasury. for the current expenses of the lunatic or of the estate shall be paid into the public treasury on account of the estate, and may be invested from time to time in the public securities.

17. It shall be lawful for any relative of a lunatic to sue for an account from any manager appointed under this Act, or from any such person after his removal from office or trust, or from his personal representative in case of his death, in respect of any estate then or formerly under his care or management, or of any sums of money or other property received by him on account of such estate.

18. The Civil Court, for any sufficient cause, may remove any manager appointed by the Court, guardian by Civil Court. not being a public curator, and may appoint such curator or any other fit person in his room, and may compel the person so removed to make over the property in his hands to his successor, and to account to such successor for all

moneys received or disbursed by him. The Court may also, for any sufficient cause, remove any guardian appointed by the Court.

In like manner, the Collector, for any sufficient cause, may remove any manager or guardian appointed by the Collector; and the Court, on the application of the Collector, shall compel any manager so removed to deliver his accounts and the property in his hands.

19. The Civil Court may impose a fine not exceeding five hundred rupees on any manager of the estate of a lunatic who wilfully neglects or refuses to deliver his accounts or any property in his hands within the prescribed time or a time fixed by the Court, and may realize such fine by attachment and sale of his property under the rules in force for the execution of decrees of Court, and may also commit the recusant to close custody until he shall deliver such accounts or property.

20. If it appears to the Civil Court, having regard to the situation and condition in life of the lunatic and his family, and the amount and description of his property, to be unnecessary to appoint a manager of the estate as hereinbefore provided, the Court may, instead of appointing such manager, order that the property if money, or, if of any other description, the produce thereof, when realized, be paid to such person as the Court may think fit, to be applied for the maintenance of the lunatic and his family.

21. When any person has been adjudged to be of unsound mind and incapable of managing his affairs, if such person, or any other person acting on his behalf, or having or claiming any interest in respect of his estate, shall represent by petition to the Civil Court, or if the Court shall be informed in any other manner, that the unsoundness of mind of such person has ceased, the Court may institute an enquiry for the purpose of ascertaining whether such person is or is not still of unsound mind and incapable of managing his affairs.

The enquiry shall be conducted in the manner provided in section 4 and the four following sections of this Act; and if it be adjudged and may order estate to be restored.

that such person has ceased to be of unsound mind and incapable of managing his affairs, the Court shall make an order for his estate to be delivered over to him, and such order shall be final.

22. Except as otherwise herein provided, all orders made by a Civil Court or by any subordinate Court under this Act shall be open to appeal under the rules in force for appeals in miscellaneous cases.

23. The word "lunatic," as used in this Act, unless the contrary appears from the context, shall mean every person found by due course of law to be of unsound mind and incapable of managing his affairs. The expression "Civil Court" shall mean the principal Court of original jurisdiction in the district. Words importing the masculine gender shall include females.

ACT XXXIV. OF 1858

[The Lunacy (Supreme Courts) Act, 1858].*

RECEIVED THE G.-G.'s ASSENT ON THE 14TH SEPTEMBER
1858.

*An Act to regulate Proceedings in Lunacy in the Courts of
Judicature established by Royal Charter.*

WHEREAS the several Courts of Judicature established by Royal Charters within the British territories in India are authorized and empowered by their respective Charters to appoint guardians and keepers of the persons and estates of lunatics, and to enquire into, hear, and determine questions of alleged lunacy by inspection of the person, or by such other ways and means by which the truth may best be discovered and known; and whereas, according to the practice of the said Courts, questions of alleged lunacy are determined by inquisition taken before a jury, and it is expedient to lessen the cost, and to alter the mode, of enquiry into such questions, and also to empower the said Courts to make provision for the due management of the estates of lunatics;† It is enacted as follows:—

1. It shall be lawful for any of the said Courts of Judicature, Court may order enquiry on such application as is hereinafter as to persons alleged to be mentioned, to make an order directing insane. an enquiry whether any person subject to the jurisdiction of the Court, who is alleged to be a lunatic, is or is not of unsound mind and incapable of managing himself and his affairs.‡ The order may also contain directions for other enquiries
- Order may direct enquiry concerning the nature of the property concerning property, &c, belonging to the alleged lunatic, the of lunatic persons who are his relatives or next-of-

* The above short title is given to Act XXXIV of 1858, which is based, to some extent, on Stat. 16 & 17 Vict., c 70 (the Lunacy Regulation Act, 1853), by the Indian Short Titles Act (XIV. of 1897).

† See Bengal Act IV of 1870, s 25

‡ *Re Arathoon*, 2 Bould. 74, *Ridgeway v. Darwin*, 8 Ves. 65.

kin, the time during which he has been of unsound mind, or such other matters as to the Court shall seem proper.

2 Application for such enquiry may be made by any person
Application by whom to related by blood or marriage to the al-
be made leged lunatic, or by the Advocate-
General.

3. The order made by the Court upon such application shall
Ordinarily enquiry to be direct the enquiry to be by the Court
by the Court. itself It shall nevertheless be lawful for
Enquiry by Judge in the Court, if it see sufficient cause for so
chambers doing, to direct the enquiry to be ex-
ecuted in chambers before a single Judge of the Court.

Reasonable notice of the time and place appointed for the
Notice of enquiry to be enquiry shall be given to the alleged
given to lunatic lunatic. If it shall appear that the alleg-

Service of notice ed lunatic is in such a state that personal
service on him would be ineffectual, the Court may direct such
substituted service of the notice as it shall think proper. The Court
may also, if it think fit, direct a copy of such notice to be served
upon any person related by blood or marriage to the alleged lunatic.

If the enquiry be directed to be executed before a single Judge,
Lunatic may demand en- it shall be lawful for the alleged lunatic,
quiry before full Court. at any time before the day fixed for the
enquiry, to demand an enquiry before the full Court. In such case
the enquiry shall be by the Court, and a further day shall be ap-
pointed for making such enquiry and, in such case, the Court may
direct such further notices (if any) to be given as it may think
requisite.

4. The Court may, at any time after the application, require
Power to require attend- the alleged lunatic to attend at such
ance of lunatic for the pur- convenient time and place, within
pose of being personally twenty miles of the place of residence
examined of the said lunatic, as it may appoint,
for the purpose of being personally examined by the Court, or by
any person from whom the Court may desire to have a report of
the mental capacity and condition of such alleged lunatic.

5. The Court may likewise, at any time after the application
Power to authorize per- for such enquiry, make an order authoriza-
sons to have access to ing any person or persons to be therein
lunatic. named to have access to the alleged
lunatic for the purpose of a personal examination.

6. The attendance and examination of the alleged lunatic

Rules respecting attendance and examination where lunatic is a woman of rank. under the provisions of the two last-preceding sections shall, if the alleged lunatic be a woman who, according to the custom and manners of the country, ought not to be compelled to appear in public, be regulated by the rules in force for the examination of such persons in other cases.

7. If the enquiry is made by a Judge of the Court, the Judge

Powers of Judge executing the enquiry shall, while so employed, have power (subject to the provisions of the last-preceding section) personally to examine the alleged lunatic, and take such evidence, on oath or otherwise, and call for such information, as he may think fit or the said Court may direct, in order to ascertain whether the alleged lunatic is or is not of unsound mind, and shall have the like powers and authority as are or may be vested by law in a Judge or Master of the said Court* for the investigation of matters referred to them by the Court.

Judge to report

The Judge shall report to the Court the result of the enquiry.

8. If the alleged lunatic be not within the local limits of the

Power to direct enquiry by principal Civil Court of original jurisdiction within whose local jurisdiction lunatic may be. jurisdiction of the Court, and the enquiry cannot conveniently be made in either of the modes hereinbefore provided, the Court may direct the enquiry to be made before any principal Court of original jurisdiction in civil cases within whose local jurisdiction the alleged lunatic may be; and such last-mentioned Court shall accordingly proceed to make such enquiry in the same manner as if the alleged lunatic were subject to its jurisdiction, and shall certify its finding upon the matters of enquiry to the Court directing the enquiry.

The evidence taken upon the enquiry shall be recorded by the Court in the English language in the form of a narrative, and a copy thereof, certified by the Court, shall be transmitted, together with any remarks the Court may think fit to make thereon, to the Court by which the enquiry was directed.

9. If the report of the Judge or the finding of a Court under

Power to amend report of the last-preceding section appear to the Judge or finding of Court. Court directing the enquiry to be defec-

* See s. 31 *infra*, and Act XVIII. of 1863, s. 5.

version, remainder, contingency, or expectancy, be sold or charged by way of mortgage, or otherwise disposed of, as may seem most expedient, for the purpose of raising money to be applied for any of the following purposes :—

1. The payment of the lunatic's debts, including any debt incurred for his maintenance or otherwise for his benefit :

2 The discharge of any incumbrance on his estate :

3. The payment of, or provision for, the expenses of his future maintenance and the maintenance of his family, including the expenses of his removal to Europe, when he shall be so removed, and all expenses incidental thereto ;

4. The payment of the costs of any enquiry under this Act, and of any costs incurred by order, or under the authority, of the Court.

19. The committee of the lunatic's estate shall, in the name Committee to execute and on behalf of the lunatic, execute all conveyances such conveyances and instruments of transfer relative to any sale, mortgage, or other disposition of his estate as the Court shall order. In like manner such committee shall, under the order of the Court, exercise all powers whatsoever vested in a lunatic, whether the same are vested in him for his own benefit, or in the character of trustee or guardian.

20. Where a person, having contracted to sell or otherwise dispose of his estate or any part thereof, afterwards becomes lunatic, the Court may order performance of contract. may, if the contract is such as the Court thinks ought to be performed, direct the committee of the estate to execute such conveyances, and to do such other acts in fulfilment of the contract, as it shall think proper.

21. If a member of a partnership firm be found lunatic, the Partner found lunatic. Court may, on the application of the other partners, or of any person who appears to the Court to be entitled to require the same, dissolve the partnership ; and thereupon, or upon a dissolution by decree of Court or otherwise by due course of law, the committee of the estate may, in the name and on behalf of the lunatic, join with the other partners in disposing of the partnership-property upon such terms, and shall do all such acts for carrying into effect the dissolution of the partnership, as the Court shall think proper.

22. Where a lunatic has been engaged in business, the Court may, if it appear to be for the lunatic's benefit that the business-premises should be disposed of, order the committee of the estate to sell and dispose of the same; and the moneys arising from such sale shall be applied in such manner as the Court shall direct.

23. Where a lunatic is entitled to a lease or under-lease, and it appears to be for the benefit of his estate that it should be disposed of, the Committee may dispose of the lease. the committee of the estate may, by order of the Court, surrender, assign, or otherwise dispose of, the same to such person for such valuable or nominal consideration, and upon such terms, as the Court shall think fit.

24. If a lunatic is possessed of any landed property situate beyond the local limits of the jurisdiction of the Court which, by the law in force in the presidency wherein such land is situated, subjects the proprietor, if disqualified, to the superintendence of the Court of Wards, the said Court of Wards may assume the charge of such landed property, and manage the same according to the rules for the time being in force for such management:

Provided that, in such case, no further proceedings in respect of the lunacy shall be taken under any such law, nor shall it be competent to the Court of Wards or to any Collector to appoint a guardian of the person of the said lunatic or a manager of the estate, except of the landed property which so subjects the proprietor as aforesaid:

Provided also that the surplus of the income of such landed property, after providing for the discharge of the Government revenue and expenses of management, shall be disposed of from time to time in such manner as the Supreme Court shall direct, and not otherwise:

Provided, further, that nothing contained in this section shall affect the powers given to the Supreme Court by sections 18, 19, and 20 of this Act or (except so far as relates to the management of the said landed property which so subjects the proprietor as aforesaid) the powers given by any other section of this Act.

32. Unless the contrary appears from the context, the word
"lunatic," as used in this Act, shall
Interpretation-clause mean any person found by due course
of law to be of unsound mind and incapable of managing his
affairs. Words importing the singular number shall include the
plural number, and words importing the plural number shall
include the singular. Words importing the masculine gender
shall include females.

THE
NEW CIVIL COURT MANUAL.
BEING
EDITION OF 1908
AS AMENDED UP TO DATE
IN THREE VOLUMES.

VOLUME II.:
MISCELLANEOUS ACTS.
M TO W.

COMPILED
BY
D. E. CRANENBURGH,
PLEADER.

Calcutta:

PRINTED AND PUBLISHED BY B. BARAL,
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3 TO 5, BOW STREET.

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PREFACE.

THIS Edition of the Civil Court Manual has been published in three pocket volumes.

Volumes I. and II. contain such of the Acts of the Governor-General in Council as are most frequently referred to, arranged in alphabetical order.

Volume III. contains the Code of Civil Procedure.

In all the Acts contained in this edition, every amendment made up to date of publication has been carefully embodied in its proper place.

Considering that the amendments recently made in most of the Acts herein contained are numerous and important, the work should prove very useful and reliable.

D. E. CRANENBURGH.

Aug. 6, 1901.

THE NEW CIVIL COURT MANUAL

IN THREE HANDY VOLUMES.

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- Stamp Act (II. of 1899).
- Succession Act (X. of 1865).
- Succession Certificate Act (VII. of 1889).
- Succession (Property Protection) Act (XIX. of 1841).

Suits Valuation Act (VII. of 1887).

Transfer of Property Act (IV. of 1882).

Treasure Trove Act (VI. of 1878).

Trustee Act (XXVII. of 1866).

Trustees' and Mortgagees' Powers Act (XXVIII. of 1866).

Trusts Act (II. of 1882).

Usury Laws Repeal Act (XXVIII. of 1855).

Waste Lands (Claims) Act (XXIII. of 1863).

ACT IX. OF 1875:

The Indian Majority Act, 1875.*

RECEIVED THE G.-G.'s ASSENT ON THE 2ND MARCH 1875.

An Act to amend the Law respecting the Age of Majority.

WHEREAS, in the case of persons domiciled in British India, it is expedient to prolong the period of nonage, and to attain more uniformity and certainty respecting the age of majority than now exists; It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Indian Majority Act, 1875:"

* For the Statement of Objects and Reasons, see *Gazette of India*, 1874, Pt V, p 153; for Proceedings in Council, see *ibid.*, Supplement, p. 668, and Extra Supplement dated 12th May 1874, p. 4, and *ibid.*, 1875, Supplement, p 333

This Act has been declared, by notification under s. 3 (a) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts, namely:—

(1) The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singhbhum. [The Lohardaga District included at this time the present District of Palamau, which was separated in 1894].—See *Gazette of India*, 1881, Pt. I., p. 504:

(2) The North-Western Provinces Tarai.—See *Gazette of India*, 1876, Pt. I., p. 505.

It has been extended, by notification under s. 5 of the same Act, to British Baluchistan.—See *Gazette of India*, 1897, Pt. II., p 60.

It has been declared in force in—

(1) Upper Burma (except the Shan States) by Act XIII. of 1898, s. 4;

(2) the Arakan Hill District by the Arakan Hill District Laws Regulation (IX. of 1874), s. 3, as amended by Act XIII. of 1898, s 16

It has been applied to the Baluchistan Agency Territories.—See *Gazette of India*, 1897, Pt. I., p. 27.

4,000—6-6-1910.

Act IX., 1875 —1.

It extends to the whole of British India, and, so far as regards subjects of Her Majesty, to the dominions of Princes and States in India in alliance with Her Majesty;

Local extent.

and it shall come into force and have effect only on the expiration of three months from the passing thereof.

Commencement and operation.

Savings.

2. Nothing herein contained shall affect—

(a) the capacity of any person to act in the following matters (namely)—marriage, dower, divorce, and adoption;

(b) the religion or religious rites and usages of any class of Her Majesty's subjects in India; or

(c) the capacity of any person who, before this Act comes into force, has attained majority under the law applicable to him.

3. Subject as aforesaid, "every minor of whose person or property, or both, a guardian, other than a guardian for a suit within the meaning of Chapter XXXI.* of the Code of Civil Procedure, has been or shall be appointed or declared by any Court of Justice before the minor has attained the age of eighteen years, and every minor of whose property the superintendence has been or shall be assumed by any Court of Wards before the minor has attained that age,"† shall, notwithstanding anything contained in the Indian Succession Act (No. X. of 1865), or in any other enactment, be deemed to have attained his majority when he shall have completed his age of twenty-one years, and not before.

Subject, as aforesaid, every other person domiciled in British India shall be deemed to have attained his majority when he shall have completed his age of eighteen years, and not before.

4. In computing the age of any person, the day on which he was born is to be included as a whole day, and he shall be deemed to have

Age of majority how computed.

* This reference to Ch. XXXI. of the old Civil Procedure Code should now mean to apply to Order XXXII. of Act V. of 1908

† The words quoted have been substituted for the words, "every minor of whose person or property a guardian has been or shall be appointed by any Court of Justice, and every minor under the jurisdiction of any Court of Wards," by the Guardians and Wards Act (VIII. of 1890), s. 32.

attained majority, if he falls within the first paragraph of section 3, at the beginning of the twenty-first anniversary of that day, and if he falls within the second paragraph of section 3, at the beginning of the eighteenth anniversary of that day.

Illustrations.

(a.) Z is born in British India on the first day of January 1850, and has a British Indian domicile. A guardian of his person is appointed by a Court of Justice: Z attains majority at the first moment of the first day of January 1871.

(b) Z is born in British India on the twenty-ninth day of February 1852, and has a British Indian domicile. A guardian of his property is appointed by a Court of Justice. Z attains majority at the first moment of the twenty-eighth day of February 1873.

(c) Z is born on the first day of January 1850. He acquires a domicile in British India. No guardian is appointed of his person or property by any Court of Justice, nor is he under the jurisdiction of any Court of Wards: Z attains majority at the first moment of the first day of January 1868.

ACT III. OF 1874.*

Married Women's Property Act 1874.

[As modified up to August 1907.]

RECEIVED THE G.G.'S ASSENT ON THE 24TH FEBRUARY 1874.

An Act to explain and amend the Law relating to certain Married Women and for other purposes.

WHEREAS it is expedient to make such provision as hereinafter appears for the enjoyment of wages and earnings by women married before the first day of January 1866, and for insurances on lives by persons married before or after that day:

Preamble.

And whereas by the Indian Succession Act, 1865,† section 4, it is enacted that no person shall by marriage acquire any interest in the property of the person whom he or she marries, nor become incapable of doing any act in respect of his or her own property which he or she could have done if unmarried:

* Act III. of 1874 has been declared in force in—

(1) The Santhál Parganas (see the Santhál Parganas Settlement Regulation, III. of 1872, s. 3, as amended by the Santhál Parganas Justice Laws Regulation, III. of 1899:

(2) The Arakan Hill District (see the Arakan Hill District Laws Regulation, IX. of 1874 s. 3).

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act (XIV of 1874), to be in force in the following Scheduled Districts. The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singhbhum (see *Gazette of India*, Oct 22, 1881, Pt I, p. 504). The District of Lohárdaga included at this time the Palamau District, which was separated in 1894.

It has been extended, by notification under s. 5 of the same Act, to the Scheduled District of the North-Western Provinces Taráí (see *Gazette of India*, Sep 23, 1876, Pt. I., p. 505); to the whole of Upper Burma except the Shan States (see Notification No. 132 *Burma Gazette*, 1893, Pt I, p. 154).

For the Statement of Objects and Reasons, see *Gazette of India*, 1873, Pt V, p. 457; for Proceedings in Council, see *ibid*, Extra Supplements, dated Aug. 2 and Sep. 6, 1873, respectively pp. 9 and 12, and *ibid*, 1874, Supplement, p. 239.

† Act X. of 1865.

4,000—11-9-1907.

III., '74 —I.

And whereas by force of the said Act all women to whose marriages it applies are absolute owners of all property vested in, or acquired by, them, and their husbands do not, by their marriage, acquire any interest in such property, but the said Act does not protect such husbands from liabilities on account of the debts of their wives contracted before marriage, and does not expressly provide for the enforcement of claims by or against such wives ;

It is hereby enacted as follows :—

I.—Preliminary.

Short title.

1. This Act may be called "The Married Women's Property Act, 1874 :"

Extent and application.

2. It extends to the whole of British India, and, so far as regards subjects of Her Majesty, to the dominions of Princes and States in India in alliance with Her Majesty.

But nothing herein contained applies to any married woman, who, at the time of her marriage, professed the Hindu, Muhammadan, Buddhist, Sikh, or Jaina religion, or whose husband, at the time of such marriage, professed any of those religions.

And the Governor-General in Council may, from time to time, by order, either retrospectively from the passing of this Act, or prospectively, exempt from the operation of all or any of the provisions of this Act the members of any race, sect, or tribe, or part of a race, sect, or tribe, to whom he may consider it impossible or inexpedient to apply such provisions.

The Governor-General in Council may also revoke any such order, but not so that the revocation shall have any retrospective effect.

All orders and revocations under this section shall be published in the Gazette of India.

The fourth section of the said Indian Succession Act shall not apply, and shall be deemed never to have applied, to any marriage one or both of the parties to which professed, at the time of the marriage, the Hindu, Muhammadan, Buddhist, Sikh, or Jaina religion.

8. [Commencement.] *Repealed by the Repealing Act (XII. of 1861).*

II.—Married Women's Wages and Earnings.

4 * The wages and earnings of any married woman acquired Married women's earnings or gained by her after the passing of this Act, in any employment, occupation, or trade carried on by her, and not by her husband,

and also any money or other property so acquired by her through the exercise of any literary, artistic, or scientific skill,

and all savings from, and investments of, such wages, earnings, and property,

shall be deemed to be her separate property, and her receipts alone shall be good discharges for such wages, earnings, and property.

III.—Insurances by Wives and Husbands.

5 † Any married woman may effect a policy of insurance on her own behalf and independently of her husband; and the same and all benefit thereof, if expressed on the face of it to be so effected, shall enure as her separate property, and the contract evidenced by such policy shall be as valid as if made with an unmarried woman.

6 ‡ A policy of insurance effected by any married man on Insurance by husband for his own life, and expressed on the face of it to be for the benefit of his wife, or of his wife and children, or any of them, shall enure and be deemed to be a trust for the benefit of his wife, or his wife and children, or any of them, according to the interest so expressed, and shall not, so long as any object of the trust remains, be subject to the control of the husband, or to his creditors, or form part of his estate.

When the sum secured by the policy becomes payable, it shall, unless special trustees are duly appointed to receive and hold the same, be paid to the Official Trustee of the Presidency in which

* Compare the Married Women's Property Act, 1870 (33 and 34 Vict., c. 93), s. 1, now repealed by the Married Women's Property Act, 1882 (45 and 46 Vict., c. 75), s. 22

† Compare the Married Women's Property Act, 1870 (33 and 34 Vict., c. 93), s. 10, para. 1.

‡ Compare the Married Women's Property Act, 1870 (33 and 34 Vict., c. 93), s. 10, para. 2.

the office at which the insurance was effected is situate, and shall be received and held by him upon the trusts expressed in the policy, or such of them as are then existing.

And in reference to such sum he shall stand in the same position in all respects as if he had been duly appointed trustee thereof by a High Court under Act No. XVII. of 1864 (*to constitute an office of Official Trustee*), section 10.

Nothing herein contained shall operate to destroy or impede the right of any creditor to be paid out of the proceeds of any policy of assurance which may have been effected with intent to defraud creditors.

IV.—Legal Proceedings by and against Married Women.

7.* A married woman may maintain a suit in her own name

Married women may take for the recovery of property of any description which, by force of the said legal proceedings. Indian Succession Act, 1865† or of this Act, is her separate property; and she shall have, in her own name, the same remedies, both civil and criminal, against all persons, for the protection and security of such property, as if she were unmarried, and she shall be liable to such suits, processes, and orders in respect of such property as she would be liable to if she were unmarried.

8. If a married woman (whether married before or after the

Wife's liability for post-nuptial debts. first day of January 1866)‡ possesses separate property, and if any person enters into a contract with her with reference to such property, or on the faith that her obligation arising out of such contract will be satisfied out of her separate property, such person shall be entitled to sue her, and, to the extent of her separate property, recover against her whatever he might have recovered in such suit had she been unmarried at the date of the contract, and continued unmarried at the execution of the decree §

* Compare the Married Women's Property Act, 1870 (33 and 34 Vict. c. 93), s. 11, now repealed by the Married Women's Property Act, 1882, (45 and 46 Vict., c. 75).

† Act X of 1865.

‡ See the Indian Succession Act (X of 1865), s. 331.

§ *Archer v. Watkins*, 8 B. L. R. 372

Provided that nothing herein contained shall affect the liability of a husband for debts contracted by his wife's agency, express or implied. . . . *

V.—Husband's Liability for Wife's Debts.

9. † A husband married after the thirty-first day of December 1865 shall not, by reason only of his wife's ante-nuptial debts such marriage, be liable to the debts of his wife contracted before marriage, but the wife shall be liable to be sued for, and shall, to the extent of her separate property, be liable to satisfy such debts as if she had continued unmarried :

Provided that nothing contained in this section shall ‡
 Proviso. invalidate any contract into which a husband may, before the passing of this Act, have entered in consideration of his wife's ante-nuptial debts.

* In s 8, the words, "or render a married woman liable to arrest or to imprisonment in execution of a decree," repealed by the Debtors Act (VI. of 1888), s 9, have here been omitted.

† Compare the Married Women's Property Act, 1870 (33 and 34 Vict., c. 93), s. 12.

‡ In s. 9, the words, "affect any suit instituted before the passing of this Act, nor," repealed by the Repealing and Amending Act (XII. of 1891), have here been omitted

ACT XXVI. OF 1881.

Negotiable Instruments.

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ACT XXVI. OF 1881.

Negotiable Instruments Act.

RECEIVED THE G.-G.'S ASSENT ON THE 9TH DECEMBER 1881.

An Act to define and amend the Law relating to Promissory Notes, Bills of Exchange, and Cheques.

WHEREAS it is expedient to define and amend the law relating to promissory notes, bills of exchange, and cheques ; It is hereby enacted as follows :—

CHAPTER I

PRELIMINARY.

Short title. 1. This Act may be called "The Negotiable Instruments Act, 1881."

Local extent. It extends to the whole of British India ; but nothing herein contained affects the Indian Paper Currency Act, 1882, section 25,* or affects any local usage relating to any instrument in an oriental language : Provided that such usages may be excluded by any words in the body of the instrument, which indicate an intention that the legal relations of the parties thereto shall be governed by this Act; and it shall come into force on the first day of March 1882.

Saving of usages relating to hundis, &c. or affects any local usage relating to any instrument in an oriental language : Provided that such usages may be excluded by any words in the body of the instrument, which indicate an intention that the legal relations of the parties thereto shall be governed by this Act; and it shall come into force on the first day of March 1882.

Commencement. which indicate an intention that the legal relations of the parties thereto shall be governed by this Act; and it shall come into force on the first day of March 1882.

2. [*Repealed by Act XII. of 1891.*]

* See Act XX of 1882, s. 2.

ACT XXVI. OF 1881.

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- Commencement. which indicate an intention that the legal relations of the parties thereto shall be governed by this Act ; and it shall come into force on the first day of March 1882.

2. [*Repealed by Act XII. of 1891.*]

* See Act XX of 1882, s. 2.

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Interpretation-clause.

3. In this Act—

"Banker."

"Banker" includes also persons or a corporation or company acting as bankers; and

"Notary public" includes also any person appointed by the Governor-General in Council to perform the functions of a notary public under this Act.

CHAPTER II.

OF NOTES, BILLS, AND CHEQUES.

4. A "promissory note" is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of a certain person, or to the bearer of the instrument.

Illustrations.

A signs instruments in the following terms —

(a) "I Promise to pay B or order Rs. 500."

(b.) "I acknowledge myself to be indebted to B in Rs. 1,000, to be paid on demand for value received."

(c) "Mr. B, I O U Rs. 1,000."

(d) "I promise to pay B Rs. 500 and all other sums which shall be due to him."

(e.) "I promise to pay B Rs. 500, first deducting thereout any money which he may owe me."

(f.) "I promise to pay B Rs. 500 seven days after my marriage with C."

(g.) "I promise to pay B Rs. 500 on D's death, provided D leaves me enough to pay that sum."

(h) "I promise to pay B Rs. 500, and to deliver to him my black horse on 1st January next."

The instruments respectively marked (a) and (b) are promissory notes. The instruments respectively marked (c), (d), (e), (f), (g), and (h), are not promissory notes.

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of 1881.

5. A "bill of exchange" is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

A promise or order to pay is not "conditional" within the meaning of this section and section 4 by reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain.

The sum payable may be "certain" within the meaning of this section and section 4, although it includes future interest, or is payable at an indicated rate of exchange, or is according to the course of exchange, and although the instrument provides that, on default of payment of an instalment, the balance unpaid shall become due.

The person to whom it is clear that the direction is given, or that payment is to be made, may be a "certain person" within the meaning of this section and section 4, although he is mis-named or designated by description only.

6. A "cheque" is a bill of exchange drawn on a specified banker, and not expressed to be payable otherwise than on demand.

7. The maker of a bill of exchange or cheque is called the "drawer;" the person thereby directed to pay is called the "drawee."

When in the bill or in any endorsement thereon the name of any person is given in addition to the drawee to be resorted to in case of need.

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of 1881.

in case of need, such person is called a "drawee in case of need."

After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf he is called the "acceptor."

"When a bill of exchange has been noted or protested for non-acceptance or for better security,"* and any person accepts it *sub a protest* for honour of the drawer or of any one of the indorsers, such person is called an "acceptor for honour."

The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the "payee."

8. The "holder" of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof, and to receive or recover the amount due thereon from the parties thereto

Where the note, bill, or cheque, is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.

9. "Holder in due course" means any person who for consideration became the possessor of a promissory note, bill of exchange, or cheque, if payable to bearer,

or the payee or indorsee thereof, if payable to, or to the order of a payee,

before the amount mentioned in it became payable, and without having sufficient cause to believe that any

* The words quoted have been substituted by Act II of 1885, s. 2, for the following "When acceptance is refused, and the bill is protested for non-acceptance."

defect existed in the title of the person from whom he derived his title.

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10 "Payment in due course" means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.

11. A promissory note, bill of exchange, or cheque, drawn or made in British India, and made payable in, or drawn upon any person resident in British India, shall be deemed to be an inland instrument.

12. Any such instrument, not so drawn, made, or made payable, shall be deemed to be a foreign instrument.

13. A "negotiable instrument" means a promissory note, bill of exchange, or cheque, expressed to be payable to a specified person or his order, or to the order of a specified person or to the bearer thereof, or to a specified person or the bearer thereof.

14. When a promissory note, bill of exchange, or cheque, is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated.

15. When the maker or holder of a negotiable instrument signs the same otherwise than as such maker, for the purpose of negotiation, on the back or face thereof, or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the "indorser."

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16. If the indorser signs his name only, the indorsement is said to be "in blank," and "in blank" and "in full." If he adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the indorsement is said to be "in full;" and the person so specified is called the "indorsee" of the instrument.

17. Where an instrument may be construed either as a promissory note or bill of exchange, the holder may, at his election, treat it as either, and the instrument shall be thenceforward treated accordingly.

18. If the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid.

19. A promissory note or bill of exchange, in which no time for payment is specified, and a cheque, are payable on demand.

20. Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in British India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives *prima-facie* authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein, and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount: Provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.

21. In a promissory note or bill of exchange the expressions "at sight" and "on presentment" mean on demand. The expression "after sight" means, in a promissory note, after presentment for sight, and, in a bill of exchange, after acceptance, or noting for non-acceptance, or protest for non-acceptance.

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22. The maturity of a promissory note or bill of exchange is the date at which it falls due.

Every promissory note or bill of exchange which is not expressed to be payable on demand, at sight, or on presentment, is at maturity on the third day after the day on which it is expressed to be payable.

23. In calculating the date at which a promissory note or bill of exchange, made payable a stated number of months after date or after sight, or after a certain event, is at maturity, the period stated shall be held to terminate on the day of the month which corresponds with the day on which the instrument is dated or presented for acceptance or sight, or noted for non-acceptance, or protested for non-acceptance, or the event happens, or, where the instrument is a bill of exchange made payable a stated number of months after sight, and has been accepted for honour, with the day on which it was so accepted. If the month in which the period would terminate has no corresponding day, the period shall be held to terminate on the last day of such month.

Illustrations.

(a) A negotiable instrument, dated 29th January 1878, is made payable at one month after date. The instrument is at maturity on the third day after the 28th February 1878.

(b.) A negotiable instrument, dated 30th August 1878, is made payable three months after date. The instrument is at maturity on the 3rd December 1878.

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(c.) A promissory note or bill of exchange, dated 31st August 1878, is made payable three months after date. The instrument is at maturity on the 3rd December 1878.

24. In calculating the date at which a promissory note or bill of exchange made payable a certain number of days after date or after sight, or after a certain event is at maturity, the day of the date, or of presentment for acceptance or sight, or of protest for non-acceptance, or on which the event happens, shall be excluded.

25. When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business-day.

Explanation.—The expression “public holiday” includes Sundays: New Year’s day, Christmas-day; if either of such days fall on a Sunday, the next following Monday: Good Friday; and any other day declared by the Local Government, by notification in the official Gazette, to be a public holiday.

CHAPTER III.

PARTIES TO NOTES, BILLS, AND CHEQUES.

26. Every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, indorsement, delivery, and negotiation of a promissory note, bill of exchange, or cheque.

A minor may draw, indorse, deliver, and negotiate such instruments so as to bind all parties except himself.

Nothing herein contained shall be deemed to empower a corporation to make, indorse, or accept such instruments

except in cases in which, under the law for the time being in force, they are so empowered.

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27. Every person capable of binding himself or of being bound, as mentioned in section 26, may so bind himself or be bound by a duly authorized agent acting in his name.

A general authority to transact business, and to receive and discharge debts, does not confer upon an agent the power of accepting or indorsing bills of exchange so as to bind his principal.

An authority to draw bills of exchange does not of itself import an authority to indorse.

28. An agent who signs his name to a promissory note, bill of exchange, or cheque, without indicating thereon that he signs as agent, or that he does not intend thereby to incur personal responsibility, is liable personally on the instrument, except to those who induced him to sign upon the belief that the principal only would be held liable.

29 A legal representative of a deceased person, who signs his name to a promissory note, bill of exchange, or cheque, is liable personally thereon, unless he expressly limits his liability to the extent of the assets received by him as such.

30. The drawer of a bill of exchange or cheque is bound, in case of dishonour by the drawee or acceptor thereof, to compensate the holder, provided due notice of dishonour has been given to, or received by, the drawer as hereinafter provided.

31. The drawee of a cheque having sufficient funds of the drawer in his hands properly applicable to the payment of such cheque must pay the cheque when duly required so to do, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default.

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32. In the absence of a contract to the contrary, the maker of a promissory note and the acceptor before maturity of a bill of exchange are bound to pay the amount thereof at maturity according to the apparent tenor of the note or acceptance respectively, and the acceptor of a bill of exchange at or after maturity is bound to pay the amount thereof to the holder on demand.

In default of such payment as aforesaid, such maker or acceptor is bound to compensate any party to the note or bill for any loss or damage sustained by him and caused by such default.

33. No person except the drawee of a bill of exchange, or all or some of several drawees, or a person named therein as a drawee in case of need, or an acceptor for honour, can bind himself by an acceptance.

34. Where there are several drawees of a bill of exchange who are not partners, each of them can accept it for himself, but none of them can accept it for another without his authority.

35. In the absence of a contract to the contrary, whoever indorses and delivers a negotiable instrument before maturity without, in such indorsement, expressly excluding or making conditional his own liability, is bound thereby to every subsequent holder, in case of dishonour by the drawee, acceptor, or maker, to compensate such holder for any loss or damage caused to him by such dishonour, provided due notice of dishonour has been given to, or received by such indorser as hereinafter provided.

Every indorser after dishonour is liable as upon an instrument payable on demand.

36. Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied.

37. The maker of a promissory note or cheque, the ^{Act} drawer of a bill of exchange until ^{XXVI.} acceptance, and the acceptor, are, in the ^{of 1881.} absence of a contract to the contrary, respectively liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the maker, drawer, or acceptor, as the case may be.

38. As between the parties, so liable as sureties, each prior party is, in the absence of a contract to the contrary, also liable thereon as a principal debtor in respect of each subsequent party.

Illustration

A draws a bill payable to his own order on B, who accepts. A afterwards indorses the bill to C C to D, and D to E. As between E and B, B is the principal debtor, and A, C, and D, are his sureties. As between E and A, A is the principal debtor, and C and D are his sureties. As between E and C, C is the principal debtor, and D is his surety.

39. When the holder of an accepted bill of exchange enters into any contract with the acceptor which, under section 134 or 135 of the Indian Contract Act, 1872, would discharge the other parties, the holder may expressly reserve his right to charge the other parties, and in such case they are not discharged.

40. Where the holder of a negotiable instrument, without the consent of the indorser, destroys or impairs the indorser's remedy against a prior party, the indorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity.

Illustration.

A is the holder of a bill of exchange made payable to the order of B, which contains the following indorsements in blank :—

First indorsement, "B,"

Second indorsement, "Peter Williams,"

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Third indorsement, "Wright & Co.,"

Fourth indorsement, "John Rozario."

This bill A puts in suit against John Rozario, and strikes out, without John Rozario's consent, the indorsements by Peter Williams and Wright & Co. A is not entitled to recover anything from John Rozario.

41. An acceptor of a bill of exchange already indorsed
 Acceptor bound, al- is not relieved from liability by reason
 though indorsement that such indorsement is forged, if he
 forged. knew or had reason to believe the
 indorsement to be forged when he accepted the bill

42. Acceptor of a bill of exchange drawn in a ficti-
 Acceptance of bill tious name, and payable to the draw-
 drawn in fictitious er's order, is not, by reason that such
 name. name is fictitious, relieved from liabi-
 lity to any holder in due course claiming under an in-
 dorsement by the same hand as the drawer's signature, and
 purporting to be made by the drawer.

43 A negotiable instrument made, drawn, accepted,
 Negotiable instru- indorsed, or transferred without con-
 ment made, &c., with- sideration, or for a consideration
 out consideration. which fails, creates no obligation of
 payment between the parties to the transaction. But, if
 any such party has transferred the instrument with or
 without indorsement to a holder for consideration, such
 holder, and every subsequent holder deriving title from him,
 may recover the amount due on such instrument from the
 transferor for consideration or any prior party thereto

Exception I.—No party for whose accommodation a negotiable instrument has been made, drawn, accepted, or indorsed, can, if he have paid the amount thereof, recover thereon such amount from any person who became a party to such instrument for his accommodation

Exception II.—No party to the instrument, who has induced any other party to make, draw, accept, indorse, or transfer the same to him for a consideration which he has failed to pay or perform in full, shall recover thereon

an amount exceeding the value of the consideration (if any) which he has actually paid or performed.

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44. When the consideration for which a person signed a promissory note, bill of exchange, or cheque, consisted of money, and was originally absent in part, or has subsequently failed in part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

Explanation.—The drawer of a bill of exchange stands in immediate relation with the acceptor. The maker of a promissory note, bill of exchange, or cheque, stands in immediate relation with the payee, and the indorser with his indorsee. Other signers may by agreement stand in immediate relation with a holder.

Illustration.

A draws a bill on B for Rs. 500 payable to the order of A. B accepts the bill, but subsequently dishonours it by non-payment. A sues B on the bill. B proves that it was accepted for value as to Rs. 400, and as an accommodation to the plaintiff as to the residue. A can only recover Rs. 400.

45. Where a part of the consideration for which a person signed a promissory note, bill of exchange, or cheque, though not consisting of money, is ascertainable in money without collateral enquiry, and there has been a failure of that part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

45A.* Where a bill of exchange has been lost before it is over-due, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer, if required, to indemnify him against all

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persons whatever in case the bill alleged to have been lost shall be found again.

If the drawer, on request as aforesaid, refuses to give such duplicate bill, he may be compelled to do so.

CHAPTER IV.

OF NEGOTIATION.

46. The making, acceptance, or indorsement of a promissory note, bill of exchange, or cheque, is completed by delivery, actual or constructive.

As between parties standing in immediate relation, delivery to be effectual must be made by the party making, accepting, or indorsing the instrument, or by a person authorized by him in that behalf.

As between such parties and any holder of the instrument other than a holder in due course, it may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein.

A promissory note, bill of exchange, or cheque payable to bearer, is negotiable by the delivery thereof.

A promissory note, bill of exchange, or cheque payable to order, is negotiable by the holder by indorsement and delivery thereof.

47. Subject to the provisions of section 58, a promissory note, bill of exchange, or cheque payable to bearer, is negotiable by delivery thereof.

Exception.—A promissory note, bill of exchange, or cheque delivered on condition that it is not to take effect except in a certain event, is not negotiable, (except in the hands of a holder for value without notice of the condition), unless such event happens.

NEGOTIABLE INSTRUMENTS.

Illustrations.

(a) A, the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep for B. The instrument has been negotiated.

(b.) A, the holder of a negotiable instrument payable to bearer, which is in the hands of A's banker, who is at the time the banker of B, directs the banker to transfer the instrument to B's credit in the banker's account with B. The banker does so, and accordingly now possesses the instrument as B's agent. The instrument has been negotiated, and B has become the holder of it.

48. Subject to the provisions of section 58, a promissory note, bill of exchange, or cheque payable to the order of a specified person, or to a specified person or order, is negotiable by the holder by indorsement and delivery thereof.

49. The holder of a negotiable instrument indorsed in blank may, without signing his own name, by writing above the indorser's signature a direction to pay to any other person as indorsee, convert the indorsement in blank into an indorsement in full; and the holder does not thereby incur the responsibility of an indorser.

50. The indorsement of a negotiable instrument followed by delivery transfers to the indorsee the property therein with the right of further negotiation; but the indorsement may, by express words, restrict or exclude such right, or may merely constitute the indorsee an agent to indorse the instrument, or to receive its contents for the indorser, or for some other specified person.

Illustrations.

B signs the following indorsements on different negotiable instruments payable to bearer:—

(a). "Pay the contents to C only."

(b). "Pay C for my use."

(c). "Pay C or order for the account of B."

(d). "The within must be credited to C."

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These indorsements exclude the right of further negotiation by C.

(e) "Pay C."

(f) "Pay C value in account with the Oriental Bank."

(g) "Pay the contents to C, being part of the consideration in a certain deed of assignment executed by C to the indorser and others."

These indorsements do not exclude the right of further negotiation by C

51. Every sole maker, drawer, payee, or indorsee, or Who may negotiate all of several joint makers, drawers, payees, or indorsees of a negotiable instrument, may, if the negotiability of such instrument has not been restricted or excluded as mentioned in section 50, indorse and negotiate the same.

Explanation.—Nothing in this section enables a maker or drawer to indorse or negotiate an instrument, unless he is in lawful possession or is holder thereof; or enables a payee or indorsee to indorse or negotiate an instrument unless he is holder thereof.

Illustration

A bill is drawn payable to A or order A indorses it to B, the indorsement not containing the words "or order" or any equivalent words B may negotiate the instrument.

52. The indorser of a negotiable instrument may, by express words in the indorsement, exclude his own liability thereon, or make such liability or the right of the indorsee to receive the amount due thereon depend upon the happening of a specified event, although such event may never happen.

Where an indorser so excludes his liability, and afterwards becomes the holder of the instrument, all intermediate indorsers are liable to him.

Illustrations

(a) The indorser of a negotiable instrument signs his name, adding the words—

"Without recourse."

Upon this indorsement he incurs no liability.

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(b.) A is the payee and holder of a negotiable instrument. Excluding personal liability by an indorsement "without recourse," he transfers the instrument to B, and B indorses it to C, who indorses it to A. A is not only reinstated in his former rights, but has the rights of an indorsee against B and C.

53. A holder of a negotiable instrument, who derives title from a holder in due course, has the rights thereon of that holder in due course.

54. Subject to the provisions hereinafter contained as to crossed cheques, a negotiable instrument indorsed in blank is payable to the bearer thereof, even although originally payable to order.

55. If a negotiable instrument, after having been indorsed in blank is indorsed in full, the amount of it cannot be claimed from the indorser in full except by the person to whom it has been indorsed in full, or by one who derives title through such person.

56. No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be due on the instrument; but, where such amount has been partly paid, a note to that effect may be indorsed on the instrument, which may then be negotiated for the balance.

57. The legal representative of a deceased person cannot negotiate, by delivery only, a promissory note, bill of exchange, or cheque payable to order, and indorsed by the deceased, but not delivered.

Legal representative cannot, by delivery only, negotiate instrument indorsed by deceased.

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58. When a negotiable instrument has been lost, or has been obtained from any maker, acceptor, or holder thereof by means of an offence or fraud, or for an unlawful consideration, no possessor or indorsee who claims through the person who found or so obtained the instrument is entitled to receive the amount due thereon from such maker, acceptor, or holder, or from any party prior to such holder, unless such possessor or indorsee is, or some person through whom he claims was, a holder thereof in due course.

59. The holder of a negotiable instrument, who has acquired it after dishonour, whether by non-acceptance or non-payment with notice thereof, or after maturity, has only, as against the other parties, the rights thereon of his transferor:

Provided that any person who, in good faith and for consideration, becomes the holder, after maturity, of a promissory note or bill of exchange made, drawn, or accepted without consideration, for the purpose of enabling some party thereto to raise money thereon, may recover the amount of the note or bill from any prior party.

Illustration.

The acceptor of a bill of exchange, when he accepted it, deposited with the drawer certain goods as a collateral security for the payment of the bill, with power to the drawer to sell the goods and apply the proceeds in discharge of the bill if it were not paid at maturity. The bill not having been paid at maturity, the drawer sold the goods and retained the proceeds, but indorsed the bill to A. A's title is subject to the same objection as the drawer's title.

60. A negotiable instrument may be negotiated (except by the maker, drawee, or acceptor until payment or satisfaction thereof by the maker, drawee, or acceptor at or after maturity, but not after such payment or satisfaction).

CHAPTER V.

OF PRESENTMENT.

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61. A bill of exchange payable after sight must, if no time or place is specified therein for presentment, be presented to the drawee thereof for acceptance, if he can, after reasonable search, be found, by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business-hours on a business-day. In default of such presentment, no party thereto is liable thereon to the person making such default.

If the drawee cannot, after reasonable search, be found, the bill is dishonoured.

If the bill is directed to the drawee at a particular place, it must be presented at that place; and, if at the due date for presentment he cannot, after reasonable search, be found there, the bill is dishonoured.

Where authorized by agreement or usage, a presentment through the post-office by means of a registered letter is sufficient.*

62. A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight (if he can, after reasonable search, be found) by a person entitled to demand payment, within a reasonable time, after it is made and in business-hours on a business-day. In default of such presentment, no party thereto is liable thereon to the person making such default.

63. The holder must, if so required by the drawee of a bill of exchange presented to him for acceptance, allow the drawee twenty-four hours (exclusive of public holidays) to consider whether he will accept it.

* The last para. of s. 61 and the second para. of s. 64 have been added by Act II. of 1885, s. 4.

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64. Promissory notes, bills of exchange, and cheques, must be presented for payment to the maker, acceptor, or drawee thereof, respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder.

Where authorized by agreement or usage, a presentment through the post-office by means of a registered letter is sufficient *

Exception.—Where a promissory note is payable on demand, and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

65. Presentment for payment must be made during the usual hours of business, and, if at a banker's, within banking hours.

Presentment for payment of instrument payable after date or sight.

66. A promissory note or bill of exchange, made payable at a specified period after date or sight thereof, must be presented for payment at maturity.

67. A promissory note payable by instalments must be presented for payment on the third day after the date fixed for payment of each instalment; and non-payment on such presentment has the same effect as non-payment of a note at maturity.

68. A promissory note, bill of exchange, or cheque, made, drawn, or accepted, payable at a specified place, and not elsewhere, must, in order to charge any party thereto, be presented for payment at that place.

69. A promissory note or bill of exchange made, drawn, or accepted, payable at a specified place, must, in order to charge

* The last para. of s. 61 and the second para. of s. 64 have been added by Act II. of 1885, s. 4.

the maker or drawer thereof, be presented for payment at that place.

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70. A promissory note or bill of exchange, not made payable as mentioned in sections 68 and 69, must be presented for payment at the place of business (if any), or at the usual residence of the maker, drawee, or acceptor thereof, as the case may be.

71. If the maker, drawee, or acceptor of a negotiable instrument, has no known place of business or fixed residence, and no place is specified in the instrument for presentment for acceptance or payment, such presentment may be made to him in person wherever he can be found.

72. "Subject to the provisions of section 84,"* a cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer.

73. A cheque must, in order to charge any person except the drawer, be presented within a reasonable time after delivery thereof by such person.

74. Subject to the provisions of section 31, a negotiable instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder.

75. Presentment for acceptance or payment may be made to the duly authorized agent of the drawee, maker, or acceptor, as the case may be, or, where the drawee, maker, or acceptor has died, to his

* The words quoted have been added by the Negotiable Instruments Act Amendment Act (VI. of 1897), s. 2.

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legal representative, or, where he has been declared an insolvent, to his assignee.

78. No presentment for payment is necessary, and When presentment the instrument is dishonoured at the unnecessary. due date for presentment in any of the following cases :—

(a) If the maker, drawee, or acceptor, intentionally prevents the presentment of the instrument, or,

if the instrument being payable at his place of business, he closes such place on a business-day during the usual business-hours, or,

if the instrument being payable at some other specified place, neither he nor any person authorized to pay it attends at such place during the usual business-hours, or,

if the instrument not being payable at any specified place, he cannot, after due search, be found ;

(b) as against any party sought to be charged therewith, if he has engaged to pay notwithstanding non-presentment ;

(c) as against any party if, after maturity, with knowledge that the instrument has not been presented—

he makes a part-payment on account of the amount due on the instrument,

or promises to pay the amount due thereon in whole or in part,

or otherwise waives his right to take advantage of any default in presentment for payment ;

(d) as against the drawer, if the drawer could not suffer damage from the want of such presentment.

77. When a bill of exchange, accepted payable at a specified bank, has been duly presented there for payment and dishonoured, if the banker so negligently or improperly keeps, deals with, or delivers back such bill as to cause loss to the holder, he must compensate the holder for such loss.

Liability of banker for negligently dealing with bill presented for payment.

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CHAPTER VI.

OF PAYMENT AND INTEREST.

78. Subject to the provisions of section 82, clause (c), payment of the amount due on a promissory note, bill of exchange, or cheque, must, in order to discharge the maker or acceptor, be made to the holder of the instrument.

To whom payment should be made.

79. When interest at a specified rate is expressly made payable on a promissory note or bill of exchange, interest shall be calculated at the rate specified on the amount of the principal money due thereon from the date of the instrument, until tender or realization of such amount, or until such date after the institution of a suit to recover such amount as the Court directs.

Interest when rate specified.

80. When no rate of interest is specified in the instrument, interest on the amount due thereon shall, except in cases provided for by the Code of Civil Procedure, section 532,* be calculated at the rate of six per centum per annum, from the date at which the same ought to have been paid by the party charged, until tender or realization of the amount due thereon, or until such date after the institution of a suit to recover such amount as the Court directs.

Interest when no rate specified.

Explanation.—When the party charged is the indorser of an instrument dishonoured by non-payment, he is liable

* See Act XIV. of 1882, s. 3.

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to pay interest only from the time that he receives notice of the dishonour.

81. Any person liable to pay, and called upon by the holder thereof to pay the amount due on a promissory note, bill of exchange, or cheque, is before payment, entitled to have it shown, and is, on payment, entitled to have it delivered up to him, or, if the instrument is lost or cannot be produced, to be indemnified against any further claim thereon against him.

Delivery of instrument on payment, or indemnity in case of loss.

holder thereof to pay the amount due on a promissory note, bill of exchange, or cheque, is before payment, entitled to have it shown, and is, on payment,

entitled to have it delivered up to him, or, if the instrument is lost or cannot be produced, to be indemnified against any further claim thereon against him.

CHAPTER VII.

OF DISCHARGE FROM LIABILITY ON NOTES, BILLS, AND CHEQUES.

82 The maker, acceptor, or indorser, respectively, of a negotiable instrument, is discharged from liability thereon—

(a) to a holder thereof who cancels such acceptor's or indorser's name with intent to discharge him, and to all parties claiming under such holder ;

(b) to a holder thereof who otherwise discharges such maker, acceptor, or indorser, and to all parties deriving title under such holder after notice of such discharge ;

(c) to all parties thereto, if the instrument is payable to bearer, or has been indorsed in blank, and such maker, acceptor, or indorser, by payment, makes payment in due course of the amount due thereon.

83. If the holder of a bill of exchange allows the drawee more than twenty-four hours, exclusive of public holidays, to consider whether he will accept the same, all previous parties not consenting to

Discharge by allowing drawee more than twenty-four hours to accept.

more than twenty-four hours, exclusive of public holidays, to consider whether he will accept the same, all previous parties not consenting to

such allowance are thereby discharged from liability to such holder.

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84* (1) Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or person on whose account it is drawn had the right, at the time when presentment ought to have been made, as between himself and the banker, to have the cheque paid, and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of the banker to a larger amount than he would have been if such cheque had been paid.

(2) In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case.

(3) The holder of the cheque as to which such drawer or person is so discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge and entitled to recover the amount from him.

Illustrations.

(a.) A draws a cheque for Rs 1,000, and, when the cheque ought to be presented, has funds at the bank to meet it. The bank fails before the cheque is presented. The drawer is discharged, but the holder can prove against the bank for the amount of the cheque.

(b.) A draws a cheque at Umballa on a bank in Calcutta. The bank fails before the cheque could be presented in ordinary course. A is not discharged, for he has not suffered actual damage through any delay in presenting the cheque.

85. Where a cheque payable to order purports to be indorsed by or on behalf of the payee, the drawee is discharged by payment in due course.

* Section 84 has been substituted for the original section by Act VI. of 1897, s. 3.

Act
XXVI.
of 1882.

86. If the holder of a bill of exchange acquiesces in a qualified acceptance, or one limited to part of the sum mentioned in the bill, or which substitutes a different place or time for payment, or which, where the drawees are not partners, is not signed by all the drawees, all previous parties whose consent is not obtained to such acceptance are discharged as against the holder and those claiming under him, unless, on notice given by the holder, they assent to such acceptance.

Parties not consenting discharged by qualified or limited acceptance.

Explanation.—An acceptance is qualified—

- (a) where it is conditional, declaring the payment to be dependent on the happening of an event therein stated ;
- (b) where it undertakes the payment of part only of the sum ordered to be paid ;
- (c) where, no place of payment being specified on the order, it undertakes the payment at a specified place, and not otherwise or elsewhere ; or where, a place of payment being specified in the order, it undertakes the payment at some other place, and not otherwise or elsewhere ;
- (d) where it undertakes the payment at a time other than that at which, under the order, it would be legally due.

87. Any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration, and does not consent thereto, unless it was made in order to carry out the common intention of the original parties ;

Effect of material alteration.

and any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof.

Alteration by indorsee.

The provisions of this section are subject to those of sections 20, 49, 86, and 125.

Act
XXVI.
of 1881.

88. An acceptor or indorser of a negotiable instrument is bound by his acceptance or indorsement, notwithstanding any previous alteration of the instrument.

Acceptor or indorser bound notwithstanding previous alteration.

89. Where a promissory note, bill of exchange, or cheque, has been materially altered, but does not appear to have been so altered,

Payment of instrument on which alteration is not apparent.

or where a cheque is presented for payment which does not, at the time of presentation, appear to be crossed, or to have had a crossing which has been obliterated,

payment thereof by a person or banker liable to pay, and paying the same according to the apparent tenor thereof at the time of payment and otherwise in due course, shall discharge such person or banker from all liability thereon; and such payment shall not be questioned by reason of the instrument having been altered, or the cheque crossed.

90. If a bill of exchange which has been negotiated is, at or after maturity, held by the acceptor in his own right, all rights of action thereon are extinguished.

Extinguishment of rights of action on bill in acceptor's hands.

CHAPTER VIII.

OF NOTICE OF DISHONOUR.

91. A bill of exchange is said to be dishonoured by dishonour by non-acceptance when the drawee, or one of several drawees not being partners, makes default in acceptance upon being duly required to accept the bill, or where presentment is excused, and the bill is not accepted.

**Act
XXVI.
of 1881.**

Where the drawee is incompetent to contract, or the acceptance is qualified, the bill may be treated as dishonoured.

92. A promissory note, bill of exchange, or cheque, is dishonoured by non-payment, when the maker of the note, acceptor of the bill, or drawee of the cheque, makes default in payment upon being duly required to pay the same.

93 When a promissory note, bill of exchange, or cheque, is dishonoured by non-acceptance or non-payment, the holder thereof, or some party thereto who remains liable thereon, must give notice that the instrument has been so dishonoured to all other parties whom the holder seeks to make severally liable thereon, and to some one of several parties whom he seeks to make jointly liable thereon.

Nothing in this section renders it necessary to give notice to the maker of the dishonoured promissory note, or the drawee or acceptor of the dishonoured bill of exchange or cheque.

94. Notice of dishonour may be given to a duly authorized agent of the person to whom it notice may be given. is required to be given, or, where he has died, to his legal representative, or where he has been declared an insolvent, to his assignee; may be oral or written; may, if written, be sent by post; and may be in any form; but it must inform the party to whom it is given, either in express terms or by reasonable intendment, that the instrument has been dishonoured, and in what way, and that he will be held liable thereon; and it must be given within a reasonable time after dishonour, at the place of business or (in case such party has no place of business) at the residence of the party for whom it is intended.

If the notice is duly directed and sent by post and miscarries, such miscarriage does not render the notice invalid.

95. Any party receiving notice of dishonour must, in order to render any prior party liable to himself, give notice of dishonour to such party within a reasonable time, unless such party otherwise receives due notice as provided by section 93.

96. When the instrument is deposited with an agent for presentment, the agent is entitled to the same time to give notice to his principal as if he were the holder giving notice of dishonour, and the principal is entitled to a further like period to give notice of dishonour.

97. When the party to whom notice of dishonour is despatched is dead, but the party despatching the notice is ignorant of his death, the notice is sufficient.

When notice of dishonour is unnecessary.

98. No notice of dishonour is necessary—

- (a) when it is dispensed with by the party entitled thereto;
- (b) in order to charge the drawer, when he has countermanded payment;
- (c) when the party charged could not suffer damage for want of notice;
- (d) when the party entitled to notice cannot, after due search, be found; or the party bound to give notice is, for any other reason, unable, without any fault of his own, to give it;
- (e) to charge the drawers, when the acceptor is also a drawer;
- (f) in the case of a promissory note which is not negotiable;
- (g) when the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.

Act
XXVI.
of 1881.

CHAPTER IX.

OF NOTING AND PROTEST.

99. When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may cause such dishonour to be noted by a notary public upon the instrument, or upon a paper attached thereto, or partly upon each.

Noting.

Such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reason (if any) assigned for such dishonour, or, if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured, and the notary's charges.

100. When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may, within a reasonable time, cause such dishonour to be noted and certified by a notary public. Such certificate is called a protest.

Protest.

When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached before the maturity of the bill, the holder may, within a reasonable time, cause a notary public to demand better security of the acceptor, and, on its being refused, may, within a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security.

Protest for better security.

101. A protest under section 100 must contain—

Contents of protest.

- (a) either the instrument itself or a literal transcript of the instrument, and of everything written or printed thereupon;
- (b) the name of the person for whom, and against whom, the instrument has been protested;

- (c) a statement that payment or acceptance or better security, as the case may be, has been demanded of such person by the notary public; the terms of his answer (if any), or a statement that he gave no answer, or that he could not be found;
- (d) when the note or bill has been dishonoured, the place and time of dishonour; and, when better security has been refused, the place and time of refusal;
- (e) the subscription of the notary public making the protest;
- (f) in the event of an acceptance for honour, or of a payment for honour, the name of the person by whom, of the person for whom, and the manner in which, such acceptance or payment was offered and effected.

Act
XXVI.
of 1881.

A notary public may make the demand mentioned in clause (c) of this section either in person or by his clerk, or, where authorized by agreement or usage, by registered letter.*

102. When a promissory note or bill of exchange is required by law to be protested, notice of such protest must be given, instead of notice of dishonour, in the same manner and subject to the same conditions; but the notice may be given by the notary public who makes the protest.

103. All bills of exchange drawn payable at some other place than the place mentioned as the residence of the drawee, and which are dishonoured by non-acceptance, may without further presentment to the drawee, be protested for non-payment, in the place specified for payment, unless paid before or at maturity.

* This para has been added by Act II. of 1885, s. 5

Act
XXVI.
of 1881.

104. Foreign bills of exchange must be protested for dishonour when such protest is required by the law of the place where they are drawn.

104A. For the purposes of this Act, where a bill or note is required to be protested without a specified time, or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding; and the formal protest may be extended at any time thereafter as of the date of the noting.*

CHAPTER X.

OF REASONABLE TIME.

105. In determining what is a reasonable time for presentment for acceptance or payment, for giving notice of dishonour and for noting, regard shall be had to the nature of the instrument and the usual course of dealing with respect to similar instruments; and, in calculating such time, public holidays shall be excluded.

106. If the holder and the party to whom notice of dishonour is given carry on business or live (as the case may be) in different places, such notice is given within a reasonable time if it is despatched by the next post, or on the day next after the day of dishonour.

If the said parties carry on business or live in the same place, such notice is given within a reasonable time if it is despatched in time to reach its destination on the day next after the day of dishonour.

* S. 104A has been inserted by Act II. of 1885, s. 6.

107. A party receiving notice of dishonour, who seeks to enforce his right against a prior party, transmits the notice within a reasonable time if he transmits it within the same time after its receipt as he would have had to give notice if he had been the holder.

Act
XXVI
of 1881,

CHAPTER XI.

OF ACCEPTANCE AND PAYMENT FOR HONOUR AND REFERENCE IN CASE OF NEED.

108. When a bill of exchange has been noted or protested for non-acceptance, or for better security, any person, not being a party already liable thereon, may, with the consent of the holder, by writing on the bill, accept the same for the honour of any party thereto.*

109. A person desiring to accept for honour must, by writing on the bill under his hand, declare that he accepts under protest the protested bill for the honour of the drawer, or of a particular indorser whom he names, or generally for honour.†

110. Where the acceptance does not express for whose honour it is made, it shall be deemed to be made for the honour of the drawer.

111. An acceptor for honour binds himself to all parties subsequent to the party for whose honour he accepts to pay the amount of the bill if the drawee do not: and such party and all prior parties are liable, in their respective capacities, to

* The second sentence of this section has been repealed by Act II. of 1885, s. 7, and has, therefore, been omitted.

† As amended by Act II. of 1885, s. 8.

Act
XXVI.
of 1881.

compensate the acceptor for honour for all loss or damage sustained by him in consequence of such acceptance.

But an acceptor for honour is not liable to the holder of the bill unless it is presented or (in case the address given by such acceptor on the bill is a place other than the place where the bill is made payable) forwarded for presentment, not later than the day next after the day of its maturity.

112. An acceptor for honour cannot be charged unless the bill has, at its maturity, been presented to the drawee for payment, and has been dishonoured by him, and noted or protested for such dishonour.

113. When a bill of exchange has been noted or protested for non-payment, any person may pay the same for the honour of any party liable to pay the same, provided that the person so paying, "or his agent in that behalf,"* has previously declared before a notary public the party for whose honour he pays, and that such declaration has been recorded by such notary public.

114. Any person so paying is entitled to all the rights, in respect of the bill, of the holder at the time of such payment, and may recover, from the party for whose honour he pays, all sums so paid with interest thereon, and with all expenses properly incurred in making such payment.

115. Where a drawee in case of need is named in a bill of exchange, or in any indorsement thereon, the bill is not dishonoured until it has been dishonoured by such drawee.

116. A drawee, in case of need, may accept and pay the bill of exchange without previous protest.

* The words quoted have been inserted by Act II, of 1885, s. 9.

CHAPTER XII.

OF COMPENSATION.

Act
XXVI.
of 1881.

117. The compensation payable in case of dishonour of a promissory note, bill of exchange, or cheque, by any party liable to the holder or any indorsee, shall (except in cases provided for by the Code of Civil Procedure, section 532*) be determined by the following rules:—

- (a) the holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting, and protesting it;
- (b) when the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places;
- (c) an indorser, who, being liable, has paid the amount due on the same, is entitled to the amount, so paid, with interest, at six per centum per annum, from the date of payment until tender or realization thereof, together with all expenses caused by the dishonour and payment;
- (d) when the person charged and such indorser reside at different places, the indorser is entitled to receive such sum at the current rate of exchange between the two places;
- (e) the party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him, together with all expenses properly incurred by him. Such bill must be accompanied by the instrument dishonoured

* See Act XIV. of 1882, s. 3.

Act
XXVI.
of 1887.

and the protest thereof (if any). If such bill is dishonoured, the party dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill.

CHAPTER XIII.

SPECIAL RULES OF EVIDENCE.

Presumption as to
negotiable instru-
ments—

118. Until the contrary is proved, the following presumptions shall be made:—

(a) that every negotiable instrument was made or drawn for consideration; and that every such instrument, when it has been accepted, indorsed, negotiated, or transferred, was accepted, indorsed, negotiated, or transferred for consideration;

(b) that every negotiable instrument bearing a date was made or drawn on such date;

(c) that every accepted bill of exchange was accepted within a reasonable time after its date, and before its maturity;

(d) that every transfer of a negotiable instrument was made before its maturity;

(e) that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

(f) that a lost promissory note, bill of exchange, or cheque, was duly stamped;

(g) that the holder of a negotiable instrument is a holder in due course: Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has

been obtained, from the maker or acceptor thereof, by means of an offence or fraud, or for unlawful consideration, the burthen of proving that the holder is a holder in due course lies upon him. Act
XXVI.
of 1881.

119. In a suit upon an instrument which has been dishonoured, the Court shall, on proof of protest, of the protest, presume the fact of dishonour, unless and until such fact is disproved.

120. No maker of a promissory note, and no drawer of a bill of exchange or cheque, and no acceptor of a bill of exchange for the honour of the drawer, shall, in a suit thereon by a holder in due course, be permitted to deny the validity of the instrument as originally made or drawn.

121. No maker of a promissory note, and no acceptor of a bill of exchange payable to, or to the order of a specified person, shall, in a suit thereon by a holder in due course, be permitted to deny the payee's capacity, at the date of the note or bill, to indorse the same.

122. No indorser of a negotiable instrument shall, in a suit thereon by a subsequent holder, be permitted to deny the signature or capacity to contract of any prior party to the instrument.

CHAPTER XIV.

OF CROSSED CHEQUES.

123. Where a cheque bears across its face an addition of the words "and company" or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally.

Act
XXVI.
of 1881.

124. Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker.

125. Where a cheque is uncrossed, the holder may cross it generally or specially.

Where a cheque is crossed generally, the holder may cross it specially.

Where a cheque is crossed generally, or specially, the holder may add the words "not negotiable."

Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection.

126. Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker.

Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or his agent, for collection.

127. Where a cheque is crossed specially to more than one banker, except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof.

128. Where the banker, on whom a crossed cheque is drawn, has paid the same in due course of crossed cheque, and (in case such cheque has come to the hands of the payee) the drawer thereof shall respectively be entitled to the same rights, and be placed in the same position in all respects, as they would respectively be entitled to, and placed in, if the amount of the cheque had been paid to, and received by the true owner thereof.

129. Any banker paying a cheque crossed generally otherwise than to a banker, or a cheque crossed specially otherwise than to the banker to whom the same is crossed, or his agent, for collection, being a banker, shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

Payment of crossed cheque out of due course.

Act XXVI. of 1881.

130. A person taking a cheque crossed generally or specially, bearing, in either case, the words "not negotiable," shall not have, and shall not be capable of giving, a better title to the cheque than that which the person from whom he took it had.

Cheque bearing "not negotiable."

131. A banker, who has, in good faith, and without negligence, received payment, for a customer, of a cheque crossed generally or specially to himself, shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment.

Non-liability of banker receiving payment of cheque.

CHAPTER XV.

OF BILLS IN SETS.

132. Bills of exchange may be drawn in parts, each part being numbered, and containing a provision that it shall continue payable only so long as the others remain unpaid. All the parts together make a set; but the whole set constitutes only one bill, and is extinguished when one of the parts, if a separate bill, would be extinguished.

Set of bills.

Exception.—When a person accepts or indorses different parts of the bill in favour of different persons, he and the subsequent indorsers of each part are liable on such part as if it were a separate bill.

Act
XXVI.
of 1881.

188. As between holders in due course of different parts of the same set, he who first acquired title to his part is entitled to the other parts and the money represented by the bill.

Holder of first-acquired part entitled to all.

CHAPTER XVI.

OF INTERNATIONAL LAW.

184. In the absence of a contract to the contrary, the liability of the maker or drawer of a foreign promissory note, bill of exchange, or cheque, is regulated in all essential matters by the law of the place where he made the instrument, and the respective liabilities of the acceptor and indorser by the law of the place where the instrument is made payable.

Law governing liability of maker, acceptor or indorser of foreign instrument.

Illustration

A bill of exchange was drawn by A in California, where the rate of interest is 25 per cent, and accepted by B, payable in Washington, where the rate of interest is 6 per cent. The bill is indorsed in British India, and is dishonoured. An action on the bill is brought against B in British India. He is liable to pay interest at the rate of 6 per cent only, but, if A is charged as drawer, A is liable to pay interest at the rate of 25 per cent.

185. Where a promissory note, bill of exchange, or cheque, is made payable in a different place from that in which it is made or indorsed, the law of the place where it is made payable determines what constitutes dishonour, and what notice of dishonour is sufficient.

Law of place of payment governs dishonour.

Illustration

A bill of exchange drawn and indorsed in British India, but accepted payable in France, is dishonoured. The indorsee causes it to be protested for such dishonour, and gives notice thereof in accordance with the law of France, though not in accordance with the rules herein contained in respect of bills which are not foreign. The notice is sufficient.

136. If a negotiable instrument is made, drawn, accepted, or indorsed out of British India, but in accordance with the law of British India, the circumstance, that any agreement evidenced by such instrument is invalid according to the law of the country wherein it was entered into, does not invalidate any subsequent acceptance or indorsement made thereon in British India.

Act
XXV¹
of 1831.

137. The law of any foreign country regarding promissory notes, bills of exchange, and cheques shall be presumed to be the same as that of British India, unless and until the contrary is proved.

CHAPTER XVII.*

NOTARIES PUBLIC.

138. The Governor-General in Council may, from time to time, by notification in the official Gazette, appoint any person, by name or by virtue of his office, to be a notary public under this Act, and to exercise his functions as such within any local area, and may, by like notification, remove from office any notary public appointed under this Act.

139. The Governor-General in Council may, from time to time, by notification in the official Gazette, make rules consistent with this Act for the guidance and control of notaries public appointed under this Act, and may, by such rules (among other matters), fix the fees payable to such notaries.

SCHEDULE.

[Repealed by Act XII. of 1891, Sch. I.]

* Ch. XVII. has been inserted by Act II. of 1835 s 10.

ACT X. OF 1873

(The Indian Oaths Act, 1873).*

[As modified up to October 1909.]

RECEIVED THE G.-G.'s ASSENT ON THE 8TH APRIL 1873.

*An Act to consolidate the Law relating to Judicial Oaths,
and for other purposes.*

WHEREAS it is expedient to consolidate the law relating to
judicial oaths, affirmations, and declara-
Preamble. tions, and to repeal the law relating to
official oaths, affirmations, and declarations; It is hereby enacted
as follows:—

I.—Preliminary.

Short title.

1. This Act may be called "The
Indian Oaths Act, 1873 :"

It extends to the whole of British India, and so far as regards
Local extent. subjects of Her Majesty, to the territories
of Native Princes and States in alliance
with Her Majesty.

* For the Statement of Objects and Reasons, see *Gazette of India*, 1873, Pt. V., p 17; for Proceedings in Council, see *ibid*, 1872, Supplement, p. 889, *ibid*, 1873, Supplement, pp. 3, 233, 235 to 246, 281, 395, and 410; *ibid*, 1873, Extra Supplement, pp. 1 to 8.

Act X. of 1873 has been declared in force in—

- (1) the Santhal Parganas by the Santhal Parganas Settlement Regulation (III. of 1872), s. 3, as amended by the Santhal Parganas Laws Regulation (III. of 1886),
- (2) the Arakan Hill District by the Arakan Hill District Laws Regulation (IX. of 1874) s 3,
- (3) Upper Burma generally (except the Shan States) by the Upper Burma Laws Act (XX. of 1886), s 6;
- (4) British Baluchistan by the British Baluchistan Laws Regulation (I. of 1890), s. 3;

[Commencement.] *Repealed by the Repealing Act (XII. of 1876).*

2. [Repeal of enactments.] *Repealed by the Repealing Act (XII. of 1873).*

3. Nothing herein contained applies to proceedings before
 Saving of certain oaths Courts-martial,* or to oaths, affirmations, or declarations prescribed by any
 and affirmations. law which under the provisions of the Indian Councils Act, 1861,†
 the Governor-General in Council has not power to repeal.

II.—Authority to administer Oaths and Affirmations.

4. The following Courts and persons are authorized to administer, by themselves or by an officer
 Authority to administer oaths and affirmations. empowered by them in this behalf,
 oaths and affirmations in discharge of the duties, or in exercise of the
 powers, imposed or conferred upon them respectively by law.—

(a) All Courts and persons having, by law or consent of parties, authority to receive evidence :

(b) The Commanding Officer of any military station occupied by troops in the service of Her Majesty :

Provided—

(c) that the oath or affirmation be administered within the limits of the station, and

(5) Angul and the Khondmals (with an exception) by the Angul District Regulation (I. of 1894), s 3

It has further been declared, by notification under s 3 (a) of the Scheduled Districts Act (XIV of 1874), to be in force in the following Scheduled Districts, namely —

The District of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singhbhum (the District of Lohardaga then included the Palamau District, separated in 1894)—*See Gazette of India, 1881, Pt I, p. 504.*

The North-Western Provinces Tarai.—*See Gazette of India, 1876, Pt. I, p. 505 :*

The Scheduled Districts in Ganjam and Vizagapatam —*See Fort St. George Gazette, 1898, Pt I, p. 666, and Gazette of India, 1898, Pt I, p. 869*

It has been extended, by notification under s 5 of the same Act, to the Scheduled District of Coorg —*See Gazette of India, 1876, Pt. I, p. 417.*

* See the Indian Articles of War (Act V. of 1869), the Indian Volunteers Act (XX. of 1869), and the Indian Marine Act (XIV. of 1887).

† Stat. 24 & 25 Vict., c. 67

- (2) that the oath or affirmation be such as a Justice of the Peace is competent to administer in British India.

III.—Persons by whom Oaths or Affirmations must be made.

Oaths or affirmations to be made by— 5. Oaths or affirmations shall be made by the following persons:—

(a) all witnesses, that is to say, all persons who may lawfully be examined, or give, or be required to give, evidence by or before any Court or person having, by law or consent of parties, authority to examine such persons, or to receive evidence:

interpreters, (b) interpreters of questions put to, and evidence given by, witnesses; and

jurors (c) jurors.

Nothing herein contained shall render it lawful to administer in a criminal proceeding an oath or affirmation to the accused person, or necessary to administer to the official interpreter of any Court, after he has entered on the execution of the duties of his office, an oath or affirmation that he will faithfully discharge those duties.

Affirmation by natives, or by persons objecting, to oaths 6. Where the witness, interpreter, or juror is a Hindu or Muham-
madan,

or has an objection to making an oath,
he shall, instead of making an oath, make an affirmation.

In every other case, the witness, interpreter, or juror shall make an oath.

IV.—Forms of Oaths and Affirmations.

7. All oaths and affirmations made under section 5 shall be administered according to such forms as the High Court may, from time to time, prescribe.*

* For forms prescribed in—

Bombay, *see* Bombay List of Local Rules and Orders, Vol. I., Ed. 1896, p. xxxii,

Burma, *see* Burma Laws List, Ed. 1897, p. 47;

Madras, *see* Madras List of Local Rules and Orders, Vol. I., Ed. 1898, p. 25,

N.-W. P. and Oudh, *see* N.-W. P. and Oudh List of Local Rules and Orders, Ed. 1894, p. 42;

Central Provinces, *see* Central Provinces List of Local Rules and Orders, Ed. 1896, p. 18.

And, until any such forms are prescribed by the High Court, such oaths and affirmations shall be administered according to the forms now in use.

[Explanation]. Repealed by Act VI. of 1900.

8. If any party to, or witness in, any judicial proceeding, offers to give evidence on oath or solemn affirmation in any form common amongst, or held binding by, persons of the race or persuasion to which he belongs, and not repugnant to justice or decency, and not purporting to affect any third person, the Court may, if it thinks fit, notwithstanding anything herebefore contained, tender such oath or affirmation to him.

9. If any party to any judicial proceeding offers to be bound by any such oath or solemn affirmation as is mentioned in section 8, if such oath or affirmation is made by the other party to, or by any witness in, such proceeding, the Court may, if it thinks fit, ask such party or witness, or cause him to be asked, whether or not he will make the oath or affirmation :

Provided that no party or witness shall be compelled to attend personally in Court solely for the purpose of answering such question.

10. If such party or witness agrees to make such oath or affirmation, the Court may proceed to administer it, or, if it is of such a nature that it may be more conveniently made out of Court, the Court may issue a commission to any person to administer it, and authorize him to take the evidence of the person to be sworn or affirmed, and return it to the Court.

Evidence conclusive as against person offering to be bound.

11. The evidence so given shall, as against the person who offered to be bound as aforesaid, be conclusive proof of the matter stated.

12. If the party or witness refuses to make the oath or solemn affirmation referred to in section 8, he shall not be compelled to make it, but the Court shall record, as part of the proceedings, the nature of

the oath or affirmation proposed, the facts that he was asked whether he would make it, and that he refused it, together with any reason which he may assign for his refusal.

V.—Miscellaneous.

13. No omission to take any oath or make any affirmation, Proceedings and evidence not invalidated by omission of oath or irregularity. no substitution of any one for any other of them, and no irregularity whatever in the form in which any one of them is administered shall invalidate any proceeding, or render inadmissible any evidence whatever, in or in respect of which such omission, substitution, or irregularity took place, or shall affect the obligation of a witness to state the truth.

14. Every person giving evidence on any subject before any Court or person hereby authorized to administer oaths and affirmations shall be bound to state the truth. Persons giving evidence bound to state the truth. administer oaths and affirmations shall be bound to state the truth on such subject.*

15. The Indian Penal Code, sections 178 and 181, shall be construed as if, after the word "oath," Amendment of Act XLV. of 1860, sections 178 and 181. the words, "or affirmation," were inserted.

16. Subject to the provisions of sections 3 and 5, no person appointed to any office shall, before entering on the execution of the duties of his office, be required to make any oath, or to make or subscribe any affirmation or declaration whatever. Official oaths abolished.

SCHEDULE.

[Repealed by the Repealing Act (XII. of 1873).]

* Compare the Indian Penal Code (Act XLV. of 1860), s. 191.

ACT XVII. OF 1864
(The Official Trustees Act, 1864).*

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

Received His Excellency's Assent on the 24th March, 1864.

An Act to constitute an Office of Official Trustee.

Preamble
WHEREAS it is expedient to amend the law relating to Official Trustees, and to constitute an office of Official Trustee; It is enacted as follows :—

1. The following words and expressions in this Act shall have the meanings hereby assigned to them unless there be something in the context repugnant to such construction, that is to say :—

Interpretation
The word "Government"† shall mean, in relation to the Presidency of Fort William in Bengal, the Governor-General in Council; in relation to the Presidency of Fort St. George, the Governor of Fort St. George in Council; and, in relation to the Presidency of Bombay, the Governor of Bombay in Council :

"Government"†
The expression "High Court" shall mean Her Majesty's High Courts of Judicature at Fort William in Bengal, Fort St. George, and Bombay, respectively, in the exercise of their original civil jurisdiction :

* This short title has been given to this Act by the Indian Short Titles Act (XIV of 1897).

For the Statement of Objects and Reasons to the Bill which was passed into law as Act XVII. of 1864, see *Calcutta Gazette*, 1863, p. 2006; for Proceedings relating to the Bill, see *Gazette of India*, Supplement, 1864, pp. 83, 86, 98, and 122.

† The definition of the word "Government" in s. 1 has been inserted by Act II. of 1890, s. 1.

The expression "Chief Justice" shall mean the Chief Justice or [Acting Chief Justice for the time being of any of the said High Courts.

"Person." The word "person" shall include a corporation.

Words importing the singular number shall include the plural, and words importing the plural number shall include the singular.

Gender. Words importing the masculine gender shall include females.

2.* In this Act references to the Presidency of Fort William Construction of referen- in Bengal, the Presidency of Fort St. ces to Presidencies. George, and the Presidency of Bombay shall, as regards all persons for whom the Governor-General in Council has for the time being power to make laws and regulations, be read as references to the Presidency of Bengal, the Presidency of Madras, and the Presidency of Bombay, respectively, as those expressions are severally defined in the law† for the time being in force relating to the office and duties of Administrator-General.

3. [*Official Trustees under Act XVII. of 1843 continued.*] *Repealed by the Repealing and Amending Act (XII. of 1891).*

4. In each of the Presidencies of Fort William in Bengal, Number of Official Trus- Fort St. George, and Bombay, there shall be an Official Trustee. tees.

The said Official Trustees shall be called the Official Trustees of Bengal, the Official Trustee of Madras, and the Official Trustee of Bombay, respectively.

Appointment, suspension, and removal of Official Trustees 5.‡ Every Official Trustee appointed under this Act§ shall be appointed and may be suspended or removed from his office by the Government.

* S 2 has been inserted by Act II. of 1890, s 2 The original s 2 (as to repeal of Act XVII. of 1843) was repealed by the Repealing Act (XIV. of 1870).

† The Administrator-Generals Act (II. of 1874).

‡ S. 5 has been substituted for the original by Act II of 1890, s 3.

§ Every person holding the office of Official Trustee at the commencement of Act II. of 1890 is to be deemed to have been appointed under Act XVII. of 1804 as amended by Act II. of 1890.—See Act II. of 1890, s 8.

6. The Administrator-General or Officiating Administrator-General for the time being of any of the said Presidencies shall be eligible for the office of Official Trustee of that Presidency.

Every Official Trustee appointed under this Act shall give security to be given by security for the due execution of the Official Trustee. duties of his office in such manner and to such amount as the Government* shall direct.

7. "It shall be lawful for the Government from time to time Leave of absence of Official Trustee, to grant leave of absence to the Official Trustee, but subject always to such and the like rules as may be for the time being in force as to leave of absence of officers attached to the High Court.

Whenever any Official Trustee shall obtain leave of absence, Appointment of person it shall be lawful for the Government to appoint some person to officiate as Official Trustee;"† and such person, while so officiating, shall be subject to the same conditions, and be bound by the same responsibilities, as the Official Trustee, and he shall be deemed to be the Official Trustee for the time being under this Act, and shall be liable to give security for the due execution of the duties of his office in like manner as if he had been appointed Official Trustee.

8. If any person shall be about to grant, assign, or settle any property, moveable or immovable, of what nature or kind soever, upon or with consent, be appointed trustee of settlement by subject to any trust, whether for a charitable purpose or otherwise, it shall be lawful for such person, with the consent of the Official Trustee, to appoint him, by the deed creating the trust, to be the trustee of such settlement;

* In s. 6, the word "Government" has been substituted for the words "Chief Justice by whom he is appointed" by Act II. of 1890, s. 4.

† In s. 7 the words quoted have been substituted for the original words by Act II. of 1890, s. 5. The original words were: "It shall be lawful for the Chief Justice of the High Court at any of the Presidencies from time to time to grant leave of absence to the Official Trustee of that Presidency but subject always to such and the like rules as may be for the time being in force as to leave of absence of the officers attached to such High Court Whenever any Official Trustee shall obtain leave of absence, it shall be lawful for the Chief Justice to appoint some person to officiate as Official Trustee."

and upon such appointment, the property so granted, assigned, or settled shall vest in such officer and his successors in office, and shall be held by him and them upon the trust declared and contained in the said deed :

Provided always that the consent of the Official Trustee shall be recited in the said deed, and that the deed shall be duly executed by the Official Trustee :

Provided also that no trust for any religious purpose shall ever be held by the Official Trustee under this, or under any other, section of this Act.

9. Every Official Trustee appointed trustee of any property under the last-preceding section shall be entitled to receive by way of remuneration in that behalf such sum or sums only as he shall, by the deed of settlement, be declared to be entitled to receive.

10. If any property is subject to a trust, whether for a charitable purpose or otherwise, and there shall be no trustee willing to act or capable of acting in the trusts thereof who is within the local limits of the ordinary or extraordinary original civil jurisdiction of the High Court, or

Other circumstances under which Official Trustee may be appointed trustee of property

if property is subject to a trust, and all the trustees, or the surviving or continuing trustee and all the persons beneficially interested in the said trust, shall be desirous that the Official Trustee shall be appointed in the room of such trustees or trustee,

then and in any such case it shall be lawful for the High Court, on petition, and with the consent of the Official Trustee, to appoint the Official Trustee to be the trustee of such property ;

and, upon such appointment, such property shall vest in the Official Trustee and his successors in office, and shall be held by him and them upon the same trusts as the same were held previous to such appointment.

11. The Official Trustee shall be entitled, by way of remuneration in respect of all trust-property transferred to him under the last-preceding section, to a commission, the rate of which shall be as follows, that is to say—

on all capital moneys received by him, a commission of one-half per cent. on receiving the same ;

on all capital moneys invested by him, a commission of one-half per cent. on investing the same ;

on all sums received by him by way of interest or dividends in respect of moneys invested, a commission of three-quarters per cent. ;

on all rents collected by him, a commission of two-and-a-half per cent. :

* Provided that the High Court, by its order appointing the Official Trustee to be trustee of such property, may, for special reasons to be recorded by the Court, direct that the Official Trustee shall be entitled, by way of remuneration in respect of the capital moneys, sums, and rents aforesaid, or any of them, to a commission at rates or at a rate to be specified in the order. and exceeding the rates or rate hereinbefore in this section prescribed.

12. The Official Trustee shall defray all the expenses of the establishment necessary for his office, including the provision of office accommodation, together with all other charges to which the said office shall be subject, except those for which express provision is made by this Act, and except those costs of litigation and the like which a trustee would, under ordinary circumstances, be entitled to pay for out of the trust-moneys in his hand.

The commission to which the Official Trustee shall be entitled is intended to cover all the expenses and risk and responsibility of management, collection, and distribution.

13. It shall in no case be lawful to appoint the Official Trustee to be sole trustee, to be a trustee along with any other person ; but the Official Trustee shall always be sole trustee.

14. The Official Trustee shall cause all capital moneys received by him to be invested in Government securities, or otherwise as the Court shall direct ;

* This proviso to s. 11 has been added by Act II. of 1890, s. 6.

and, if, in any case, the trust-funds or any part of them shall, at the time of their vesting in the Official Trustee, be invested otherwise than as provided in the deed or will creating the trust, or than as ordered by the Court, it shall be the duty of the Official Trustee, as soon as he reasonably can, to realize the funds so improperly invested, and to invest the same in Government securities, or otherwise as the Court shall direct.

15. The High Court may make any such orders as shall seem to it necessary respecting any trust-property vested in the Official Trustee or the interest or produce thereof.

All such orders shall be made on petition unless the Court shall direct a suit to be instituted.

16. Nothing in this Act shall prevent the re-transfer of any trust-property which may have become vested in the Official Trustee to the original or any subsequently appointed trustee, or to such person as the Court shall direct, unless otherwise provided by the deed or will creating the trust.

17. All orders which shall be made appointing any Official Trustee to act as trustee in virtue of his office shall appoint him by his name of office, and shall authorize the Official Trustee for the time being of the same Presidency to act as Official Trustee of the property to which such order shall relate ;

and all property and interests, which, at the time of the death, resignation, or removal from office of any Official Trustee, shall be vested in him by virtue of such order, shall, upon such death, resignation, or removal, cease to be vested in him, and shall vest in his successor in office immediately upon his appointment thereto ;

and all books, papers, and documents kept by such Official Trustee by virtue of his office shall be transferred to and vested in his successor in office.

18. All actions, suits, or other proceedings, which shall be commenced by or against any Official Trustee in his official character, may be brought by or against him by his name of office ;

and no suit, action, or other proceeding already commenced, or Suit not to abate by death, which shall be commenced, by or against &c. any person as Official Trustee, either alone or jointly with any other person, shall abate by reason of the death, resignation, or removal from office of any such Official Trustee ;

but the same may, by order of the Court, and upon such terms as to the service of notices or otherwise Continuanee of suit as the Court may direct, be continued against his successor immediately upon his appointment in the same manner as if no such death, resignation, or removal had occurred :

Provided that nothing herein contained shall render any such successor personally liable for any costs incurred prior to the order for continuing the action or suit against him, or shall release an Official Trustee who has resigned or been removed from his office, or the heirs, executors, administrators, or representatives of a deceased Official Trustee, from being liable for any such costs.

19. Every Official Trustee appointed under this Act shall enter, into books to be kept by him for that purpose, separate and distinct accounts of each trust of which he is the trustee, and of all such sums of money and securities for money, goods, and things, as shall come to his hands, or to the hands of any person employed by him, or in trust for him, under this Act. and likewise of all payments made by him on account of such trust, and of all debts due by or to the same, specifying the dates of such receipts and payments respectively ;

which said books shall be kept in the Official Trustee's office, and shall be at all times open for the Inspection of books, inspection of the Chief Justice and of any person authorized by him to demand inspection thereof.

Chief Justice may make and alter rules and orders for custody of trust-funds, &c.

20. The Chief Justice shall have power, from time to time, to make and alter any general rules and orders consistently with the provisions of this Act.—

for the safe custody of the trust-funds and securities which shall come to the hands or possession of the Official Trustee, and

for the remittance to Europe or elsewhere of all sums of money which shall be payable or belong to persons resident in Europe or elsewhere, or, in other cases, where such remittances shall be required,

and generally for the guidance and government of the Official Trustee in the discharge of his duties ;

and may, by such rules and orders, amongst other things, direct what books, accounts, and statements, in addition to those mentioned in this Act, shall be kept by the Official Trustee, and in what form the same shall be kept, and what entries the same shall contain, and where the same shall be kept, and where and how the funds and securities and other the property belonging to the trust, of which the Official Trustee is the trustee, shall be kept or invested or deposited, and how any remittances thereof shall be made.

21. Such orders shall be published in the Official Gazette, and it shall be the duty of the several Official Trustees to obey and fulfill the same, and the same shall be a full authority and indemnity for all persons acting in pursuance thereof.

22 The Official Trustee of each of the said Presidencies shall once in every year, that is to say, on the first day of March, or on such other day as the Chief Justice shall direct, deliver to the Chief Justice—

Official Trustee to furnish annual schedules, which shall be filed in High Court.

a true schedule showing the gross amount of all sums of money received or paid by him on account of each trust of which he is the trustee, and the balances during the year ending on the thirty-first day of December next before the day of delivering such schedule; and

a true list of all securities received on account of each of the said trusts during the same period; and also

a true schedule of all trusts which shall have come to an end or of which the Official Trustee shall have ceased to be the trustee, and the property subject to which shall have been paid or made over to the persons entitled to the same, or to new trustees during the same period, specifying the nature and amount or value of such property and the persons to whom paid or made over.

The Chief Justice shall cause the said schedules to be filed as Filing and inspection of record in the High Court; but it shall not be lawful for any person to inspect the same, or to make copies thereof, or of any part thereof, except on an order granted by the Chief Justice permitting him so to do.

23. The Chief Justice shall from time to time appoint an Chief Justice to appoint auditor or auditors to examine the accounts of the Official Trustee at the time of the delivery of the said schedules, and also at any other time when the Chief Justice shall think fit.

Auditors to examine schedules and accounts of Official Trustee, and to report to Chief Justice **24.** The auditor or auditors shall examine the schedules and accounts, and report to the Chief Justice—

whether they contain a full and true account of everything which ought to be inserted therein, and

whether the books, which by this Act are, or which by any such general rules and orders as aforesaid shall be, directed to be kept by the Official Trustee, have been duly and regularly kept, and

whether the trust-funds and securities have been duly kept and invested and deposited in the manner prescribed by this Act, or which shall be prescribed by any such rules and orders to be made as aforesaid.

Auditor's power to summon witnesses, and to call for books, &c. **25.** Every auditor shall have power—

to summon as well the Official Trustee as any other person or persons whose presence he may think necessary to attend him from time to time; and

to examine the Official Trustee or other party or parties, if he shall think fit, on oath or solemn affirmation to be by him administered; and

to call for all books, papers, vouchers, and documents which shall appear to him to be necessary for the purposes of the said reference;

and, if the Official Trustee or other person or persons, when summoned, shall refuse, or without reasonable cause neglect, to attend or to produce any book, paper, voucher, or document Report to High Court of refusal or neglect to attend, or to produce books, &c.

required, or shall attend and refuse to be sworn or make a solemn affirmation when by law an affirmation may be substituted for an oath, or shall refuse to be examined, the auditor or auditors shall certify such neglect or refusal in writing to the High Court;

and every person so refusing or neglecting shall thereupon be punishable in like manner as if such refusal or neglect had been in contempt of the said High Court.

Penalty.

26. The costs and expenses of preparing the said schedules and accounts, and of every such reference and examination as aforesaid, shall be defrayed by all the trust-estates to which such schedules or accounts shall relate, which costs and expenses, and the portion thereof to be contributed by each of the said trust-estates, shall be ascertained and settled by the auditor or auditors subject to the approval of the Chief Justice, and shall be paid out of the said estates accordingly by the Official Trustee.

Costs of preparing schedules, &c., how paid.

27. If, upon any such reference and examination, the auditor or auditors shall see reason to believe—

Matters to be reported by auditors.

that the said schedules do not contain a true and correct account of the matters therein contained, or which ought to be therein contained, or

that the trust-funds and securities have not been duly kept and invested or deposited in the manner directed by this Act, or which shall be directed by any such rules and orders as aforesaid, or

that the Official Trustee has failed to comply with the provisions and directions of this Act, or of any such rules and orders,

he, or they shall report accordingly to the Chief Justice.

28. The Chief Justice may refer every such report as last aforesaid to the consideration of the Advocate-General for the Presidency, who shall thereupon, if he shall think fit, proceed summarily against the defaulter or his personal representative in the High Court by petition for an account, or to compel obedience to this Act or to such rules and orders as aforesaid, or otherwise as he may think fit, in respect of all or any of the trust-estates then or formerly under the charge of such defaulter;

Proceedings upon such report.

and the Court shall have power, upon any such petition, to compel the attendance in Court of the defendant or defendants, and any witnesses who may be thought necessary, and to examine them orally or otherwise as the said Court shall think fit, and to make and enforce such order or orders as the Court shall think just.

29. The costs, including those of the Advocate-General, and Costs upon such proceedings of the reference to him, if the same shall be directed by the Court to be paid, shall be defrayed either by the defendant or defendants, or out of the trust-estates rateably, as the said Court shall direct ;

and whenever any costs shall be recovered from the defendant or defendants, the same shall be repaid to the estates by which the same shall have been in the first instance contributed, and the Court shall have power to order the Official Trustee or other person or persons, defendants, to receive his or her costs out of the said estates, if it shall think fit.

30. Any orders which shall be made by any of the said High Courts shall have the same effect, and be executed in the same manner, as decrees.

31. Any order under this Act may be made on the application of any person beneficially interested in any trust-property, or of any trustee thereof, whether under disability or not.

32. If any infant or lunatic shall be entitled to any gift or legacy or residue or share thereof, it shall be lawful for the executor or administrator by whom such legacy, residue, or share may be payable or transferable, or the party by whom such gift may be made, or any trustee of such gift, legacy, residue, or share, to pay or transfer the same to the Official Trustee appointed under this Act :

Provided that the leave of the High Court to make such payment or transfer shall be first obtained by motion made on petition.

Any money or property paid or transferred to the Official Trustee or vested in him under this section shall be subject to the same provisions as are contained in this Act as to other property vested in such Official Trustee under the provisions thereof.

33.* The Official Trustee shall comply with such requisitions as may be made by the Government for returns and statements in such form and manner as the Government may deem proper.

34.* (1) Notwithstanding anything in the foregoing provisions of this Act, the Governor-General in Council, upon the occurrence of any vacancy in the office of the Official Trustee of Bengal, may, by notification in the *Gazette of India*,—

- (a) divide the Presidency of Fort William in Bengal into so many provinces as he thinks fit;
- (b) define the limits of each of those provinces; and
- (c) appoint an Official Trustee for each province; and, subject to the provisions of this section, the following consequences shall thereupon ensue, namely —
 - (i) the office of Official Trustee of Bengal shall cease to exist;
 - (ii) the Official Trustee of a province shall have the like rights and privileges, and perform the like duties, in the territories and dominions included in the province as the Official Trustee of Bengal had and performed as Official Trustee thereon;
 - (iii) the functions of the Government under this Act shall, as regards the territories and dominions included in the province, be discharged by the Governor-General in Council;
 - (iv) the functions of whatsoever kind assigned by the foregoing provisions of this Act to the High Court of Judicature at Fort William in Bengal in respect of the territories and dominions included in a province shall be discharged by such High Court as the Governor-General in Council may, by notification in the *Gazette of India*, appoint in this behalf;

* Ss. 33 and 34 have been added by Act II. of 1890, s. 7.

- (v) in the foregoing provisions of this Act, the word 'Presidency' shall be deemed to include a province, the expression 'Chief Justice', the Chief Justice, senior Judge, or sole Judge, as the case may be, of a High Court appointed by the Governor-General in Council under clause (iv) of this subsection ; and the expression 'Advocate-General,' a Government Advocate or other officer appointed by the Governor-General in Council to discharge for a province the functions under this Act of an Advocate-General for a Presidency ; and.
- (vi) generally, the provisions of the foregoing sections and of any other enactment for the time being in force with respect to the Official Trustee of Bengal shall, in relation to a province, be construed, so far as may be, to apply to the Official Trustee appointed for the province under this section.

(2) Any proceeding which was commenced before the publication of the notification dividing the Presidency of Fort William in Bengal into provinces, and to or in which the Official Trustee of Bengal in his representative character was a party or was otherwise concerned, shall be continued as if the notification had not been published, and the Official Trustee of the province in which the Town of Calcutta is comprised shall, for the purposes of the proceeding, be deemed to be the successor in office of the Official Trustee of Bengal, and shall hold and execute the trusts of which, immediately before the publication of the notification, the Official Trustee of Bengal was trustee in all respects as if he were such successor.

[Sub section (3), as added by s. 7 of Act II. of 1890, has been repealed by Act VI. of 1900, s. 48.]

ACT XXI. OF 1865.*

The Parsi Intestate Succession Act, 1865.*

RECEIVED THE G-G'S ASSENT ON THE 10TH APRIL 1865.

An Act to define and amend the Law relating to Intestate Succession among the Pársis.

WHEREAS it is expedient to define and amend the law relating to intestate succession among the Pársis ;
Preamble. It is enacted as follows :—

* This short title has been given by the Indian Short Titles Act (XIV. of 1897)

For Statement of Objects and Reasons of the Bill, which was passed into law as Act XX. of 1865, see *Gazette of India* 1865, p. 219; for proceedings relating to the Bill, see *ibid*, supplement, pp. 68, 99, 113, 154.

Act XXI. of 1865 has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has also been declared to be in force in the Arakan Hill District by the Arakan Hill District Laws Regulation (IX. of 1874), s. 3.

It has been declared, by notification under s. 3 (c) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts —

- (1) Sindh (see *Gazette of India*, Dec. 2, 1880, Pt. I, p. 672).
- (2) West Jalpáiguri (see *Gazette of India*, 1881, Pt. I, p. 74).
- (3) The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum (see *Gazette of India* 1881, Pt. I, p. 504).
- (4) Kumáon and Garhwál (see *Gazette of India*, 1876, Pt. I, p. 605).
- (5) The Scheduled Portion of the Mirzápur District (see *Gazette of India*, 1879, Pt. I, p. 383).
- (6) Jaunsar Bawár (see *Gazette of India*, 1879, Pt. I, p. 382).
- (7) The Districts of Hazára, Pesháwar, Kohát, Bannu, Dera Ismail Khán, and Dera Gházi Khán (see *Gazette of India*, 1886, Pt. I, p. 48).
- (8) Ajmere and Merwára (see *Gazette of India*, 1878, Pt. I, p. 380).
- (9) The District of Silhat (see *Gazette of India*, 1879, Pt. I, p. 631).
- (10) The rest of Assam (except the North Lushai Hills) (see *Gazette of India*, 1897, Pt. I, p. 299).

It has been declared, by notification under s. 3 (d) of the last-mentioned Act, not to be in force in the Scheduled District of Lahaul (see *Gazette of India*, 1866, Pt. I, p. 301).

It has been extended by notification under s. 5 of the same Act to the Scheduled District of the North-Western Provinces Taráí (see *Gazette of India*, 1876, Pt. I, p. 505).

THE SECOND SCHEDULE.

- (1) Father and mother.
 - (2) Brothers and sisters, and the lineal descendants of such of them as shall have predeceased the intestate.
 - (3) Paternal grandfather and paternal grandmother.
 - (4) Children of the paternal grandfather, and the lineal descendants of such of them as shall have predeceased the intestate.
 - (5) Paternal grandfather's father and mother.
 - (6) Paternal grandfather's father's children, and the lineal descendants of such of them as shall have predeceased the intestate.
 - (7) Brothers and sisters by the mother's side, and the lineal descendants of such of them as shall have predeceased the intestate.
 - (8) Maternal grandfather and maternal grandmother.
 - (9) Children of the maternal grandfather, and the lineal descendants of such of them as shall have predeceased the intestate.
 - (10) Son's widow, if she have not remarried at or before the death of the intestate.
 - (11) Brother's widow, if she have not remarried at or before the death of the intestate.
 - (12) Paternal grandfather's son's widow, if she have not remarried at or before the death of the intestate.
 - (13) Maternal grandfather's son's widow, if she have not remarried at or before the death of the intestate.
 - (14) Widowers of the intestate's deceased daughters, if they have not remarried at or before the death of the intestate.
 - (15) Maternal grandfather's father and mother.
 - (16) Children of the maternal grandfather's father, and the lineal descendants of such of them as shall have predeceased the intestate.
 - (17) Paternal grandfather's father and mother.
 - (18) Children of the paternal grandfather's father, and the lineal descendants of such of them as shall have predeceased the intestate.
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ACT XV. OF 1865:

The Parsi Marriage and Divorce Act, 1865.*

RECEIVED THE G.-G.'s ASSENT ON THE 7TH APRIL 1865.

An Act to define and amend the Law relating to Marriage and Divorce among the Parsis.

WHEREAS the Parsi community has represented the necessity of defining and amending the law relating to marriage and divorce among PARSIS; AND WHEREAS it is expedient that such law should be made

* For the Statement of Objects and Reasons of the Bill which was passed into law as Act XV of 1865, see *Gazette of India*, 1865, p. 99, for Discussions on the Bill, see *ibid*, Supplement, pp. 44, 110, and 113

Act XV of 1865 has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV of 1874), s 3

It has been declared, under s 3 (a) of the Scheduled Districts Act (XIV of 1874), to be in force in the following Scheduled Districts.—

Sindh—See *Gazette of India*, Dec 4, 1880, Pt 1., p. 672.

West Jalpaiguri—See *Gazette of India*, Mar 5, 1881, Pt 1, p 74.

The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singhbhum.—See *Gazette of India*, Oct 22 1881, Pt. 1, p 504.

The scheduled portion of the Mirzapur District.—See *Gazette of India*, May 31, 1879, Pt 1, p. 383

Jaunsar Bawar—See *Gazette of India*, May 31, 1879, Pt 1, p 382.

The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, and Dera Ghazi Khan.—See *Gazette of India*, Jan. 30, 1886, Pt. 1, p. 48.

The District of Sylhet.—See *Gazette of India*, Oct. 4, 1879, Pt. 1., p. 631

The rest of Assam (except the North Lushai Hills) —See *Gazette of India*, 1897, Pt 1, p. 299.

It has been extended, under the same Act, to the following Scheduled Districts.—

Kumaon and Garhwal—See *Gazette of India*, Dec. 4, 1876, Pt. 1., p. 606

The North-Western Provinces Tarai—See *Gazette of India*, Sep. 23, 1876, Pt., 1, p 505.

British Baluchistan—See *Gazette of India*, 1898, Pt. II., p. 327.

It has been declared, under the same Act, not to be in force in the Scheduled District of Lahaul.—See *Gazette of India*, May 1, 1886, Pt. 1., p. 301.

2000.—30-7-1909

Act XV, 1865.—1,

conformable to the customs of the said community; It is enacted as follows :—

I.—Preliminary.

- Short title. 1. This Act may be cited as "The Parsi Marriage and Divorce Act, 1865."
- Interpretation-clause. 2. In this Act, unless there be something repugnant in the subject or context,—
- words in the singular number include the plural, and words in the plural number include the singular;
- Number.
- "Priest." "priest" means a Parsi priest, and includes Dastur and Mobed;
- "marriage" means a marriage between Parsis, whether contracted before or after the commencement of this Act, and "husband" and "wife" respectively mean a Parsi husband and a Parsi wife,
- "Section." "section" means a section of this Act;
- "Chief Justice." "Chief Justice" includes Senior Judge,
- "Court." "Court" means a Court constituted under this Act;
- "British India" means the territories which are or shall be vested in Her Majesty or Her successors by the Statute 21 & 22 Vict., cap. 106, entitled "An Act for the better government of India;"
- "Local Government." and in any part of British India in which this Act operates, "Local Government" means the person authorized to administer executive government in such part of India, or the chief executive officer of such part when it is under the immediate administration of the Governor-General of India in Council, and when such officer shall be authorized to exercise the powers vested by this Act in a Local Government; and
- "High Court." "High Court" means the highest Civil Court of appeal in such part.

II—Of Marriages between Parsis.

3. No marriage contracted after the commencement of this Act shall be valid if the contracting parties are related to each other in any of the degrees of consanguinity or affinity prohibited among Parsis, and set forth in a table which the Governor-General of India in Council shall, after due enquiry, publish in the *Gazette of India*,* and unless such marriage shall be solemnized according to the Parsi form or ceremony called "Asirvad" by a Parsi priest in the presence of two Parsi witnesses independently of such officiating priest; and unless, in the case of any Parsi who shall not have completed the age of twenty-one years, the consent of his or her

* The following Table was published in the *Gazette of India*, Sep. 9, 1865, pp 981, 982 —

TABLE.

A man shall not marry his—

- | | |
|--|---|
| 1. Paternal grandfather's mother. | 17. Wife of son or of step-son, or of any direct lineal descendant of a son or step-son |
| 2. Paternal grandmother's mother. | 18. Wife of daughter's son, or of step daughter's son, or of any direct lineal descendant of a daughter or step daughter. |
| 3. Maternal grandfather's mother | 19. Mother of daughter's husband. |
| 4. Maternal grandmother's mother. | 20. Mother of son's wife. |
| 5. Paternal grandmother | 21. Mother of wife's paternal grandfather. |
| 6. Paternal grandfather's wife. | 22. Mother of wife's paternal grandmother |
| 7. Maternal grandmother. | 23. Mother of wife's maternal grandfather |
| 8. Maternal grandfather's wife. | 24. Mother of wife's maternal grandmother |
| 9. Mother or step-mother | 25. Wife's paternal grandmother. |
| 10. Father's sister or step-sister. | 26. Wife's maternal grandmother. |
| 11. Mother's sister or step-sister. | 27. Wife's mother or step mother. |
| 12. Sister or step sister | 28. Wife's father's sister. |
| 13. Brother's daughter or step-brother's daughter, or any direct lineal descendant of a brother or step brother. | 29. Wife's mother's sister. |
| 14. Sister's daughter or step-sister's daughter, or any direct lineal descendant of a sister or step-sister | 30. Father's brother's wife |
| 15. Daughter or step-daughter, or any direct lineal descendant of either. | 31. Mother's brother's wife. |
| 16. Son's daughter or step-son's daughter, or any direct lineal descendant of a son or step-son. | 32. Brother's son's wife. |
| | 33. Sister's son's wife. |

father or guardian shall have been previously given to such marriage.

4. No Parsi shall, after the commencement of this Act, contract

Re-marriage, *five after* any marriage in the lifetime of his or
divorce, *unlawful during life-* her wife or husband, except after his or
time of first wife or husband her lawful divorce from such wife or
husband by sentence of a Court as hereinafter provided ;

and every marriage contracted contrary to the provisions of this section shall be void.

TABLE

A woman shall not marry her—

- | | |
|--|---|
| 1. Paternal grandfather's father | 17 Husband of daughter or of step-daughter, or of any direct lineal descendant of a daughter or s.e.p-daughter. |
| 2. Paternal grandmother's father | |
| 3. Maternal grandfather's father | 18. Husband of son's daughter or of step-son's daughter, or of any direct lineal descendant of a son or step-son. |
| 4. Maternal grandmother's father | |
| 5. Paternal grandfather. | 19 Father of daughter's husband. |
| 6. Paternal grandmother's husband | 20 Father of son's wife |
| 7. Maternal grandfather | 21 Father of husband's paternal grandfather. |
| 8. Maternal grandmother's husband. | 22. Father of husband's paternal grandmother |
| 9. Father or step father | 23. Father of husband's maternal grandfather |
| 10. Father's brother or step-brother | 24. Father of husband's maternal grandmother. |
| 11. Mother's brother or step brother | 25. Husband's paternal grandfather. |
| 12. Brother or step-brother | 26. Husband's maternal grandfather. |
| 13. Brother's son or step-brother's son, or any direct lineal descendant of a brother or step brother. | 27. Husband's father or step-father. |
| 14. Sister's son or step-sister's son, or any direct lineal descendant of a sister or step-sister. | 28. Brother of husband's father |
| 15. Son or step-son, or any direct lineal descendant of either | 29. Brother of husband's mother |
| 16. Daughter's son or step-daughter's son, or any direct lineal descendant of a daughter or step-daughter. | 30. Husband's brother's son, or his direct lineal descendant |
| | 31. Husband's sister's son, or his direct lineal descendant |
| | 32. Brother's daughter's husband. |
| | 33. Sister's daughter's husband. |

Note—In the above table the words "Brother" and "Sister" denote brother and sister of the whole as well as half-blood. Relationship by step means relationship by marriages

5. Every Parsi who shall, after the commencement of this Act, and during the lifetime of his or her wife or husband, contract any marriage without having been lawfully divorced from such wife or husband, shall be subject to the penalties provided in sections 494 and 495 of the Indian Penal Code* for the offence of marrying again during the lifetime of a husband or wife.

6. Every marriage contracted after the commencement of this Act shall, immediately on the solemnisation thereof, be certified by the officiating priest in the form contained in the Schedule to this Act.

The certificate shall be signed by the said priest, the contracting parties, or their fathers or guardians when they shall not have completed the age of twenty-one years and two witnesses present at the marriage; and the said priest shall thereupon send such certificate, together with a fee of two rupees to be paid by the husband to the registrar of the place at which such marriage is solemnized.

The registrar, on receipt of the certificate and fee shall enter the certificate in a register to be kept by him for that purpose, and shall be entitled to retain the fee.

7. For the purposes of this Act, a registrar shall be appointed.

Appointment of registrar. Within the local limits of the ordinary original civil jurisdiction of a High Court, the registrar shall be appointed by the Chief Justice of such Court; and, without such limits, by the Local Government.

Every registrar so appointed may be removed by the Chief Justice or Local Government† appointing him.

8. The register of marriages mentioned in section 6 shall at all reasonable times, be open for inspection; and certified extracts therefrom

* Act XLV of 1860

† In s 7 the words "who may be the registrar appointed under Act XVI of 1864 (to provide for the registration of assurances)," repealed by Act XIV. of 1870, have here been omitted.

‡ Registrars of Assurances in certain towns in the Central Provinces have been appointed Registrars of Parsi Marriages—See Central Provinces List of Local Rules and Orders, Ed 1896, p. 14.

For Registrars of Parsi Marriages appointed in Burma, see the Burma Rules Manual, Ed 1897, p. 24.

shall, on application, be given by the registrar on payment to him by the applicant of two rupees for each such extract.

Every such register shall be evidence of the truth of the statements therein contained.

8A.* Every registrar, except the registrar appointed by the Chief Justice of the High Court of Judicature at Bombay, shall at such intervals as the Governor-General in Council from time to time directs, send to the Registrar-General of Births, Deaths, and Marriages for the territories administered by the Local Government by which he was appointed, a true copy, certified by him in such form as the Governor-General from time to time prescribes, of all certificates entered by him in the said register of marriages since the last of such intervals.

9. Any priest knowingly and wilfully solemnizing any marriage contrary to, and in violation of, section 4, shall, on conviction thereof, be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with both.

10. Any priest neglecting to comply with any of the requisitions affecting him contained in section 6 shall, on conviction thereof, be punished for every such offence with simple imprisonment for a term which may extend to three months, or with fine which may extend to one hundred rupees, or with both.

11. Every other person required by section 6 to subscribe or attest the said certificate, who shall wilfully omit or neglect so to do, shall, on conviction thereof, be punished for every such offence with a fine not exceeding one hundred rupees.

12 Every person making or signing or attesting any such certificate containing a statement which is false, and which he either knows or believes to be false, or does not know to be true, shall be deemed

* S. 8A has been inserted by the Births, Deaths, and Marriages Registration Act (VI. of 1886), s. 31.

to be guilty of the offence of forgery as defined in the Indian Penal Code,* and shall be liable, on conviction thereof, to the penalties provided in section 466 of the said Code.*

13. Any registrar failing to enter the said certificate pursuant to section 6 shall be punished with simple imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

14. Any person secreting, destroying, or dishonestly or fraudulently altering the said register in any part thereof, shall be punished with imprisonment of either description as defined in the Indian Penal Code* for a term which may extend to two years, or, if he be a registrar, for a term which may extend to five years, and shall also be liable to fine which may extend to five hundred rupees.

III.—Of Parsi Matrimonial Courts.

15 For the purposes of hearing suits under this Act, a special Constitution of special Courts shall be constituted in each of the Courts under Act. Presidency towns of Calcutta, Madras, and Bombay, and in such other places in the territories of the several Local Governments as such Governments respectively shall think fit.

16. The Court so constituted in each of the Presidency-towns shall be entitled the Parsi Chief Matrimonial Court of Calcutta, Madras, or Bombay, as the case may be.

The local limits of the jurisdiction of a Parsi Chief Matrimonial Court shall be conterminous with the local limits of the ordinary original civil jurisdiction of the High Court.

The Chief Justice of the High Court, or such other Judge of the same Court as the Chief Justice shall from time to time appoint, shall be the Judge of such Matrimonial Court; and, in the trial of cases under this Act, he shall be aided by eleven delegates.

* Act XLV. of 1860.

† For notification constituting the Parsi Chief Matrimonial Court of Bombay, see Bombay List of Local Rules and Orders, Ed 1896, p 27.

17. Every Court so constituted at a place other than a presidency-town shall be entitled the Parsi District Matrimonial Court, and shall be entitled the Parsi District Matrimonial Court of such place.*

Subject to the provisions contained in the next following section, the local limits of the jurisdiction of such Court shall be continuous with the limits of the district in which it is held.

The Judge of the principal Court of original civil jurisdiction at such place shall be the Judge of such Matrimonial Court, and, in the trial of cases under this Act, he shall be aided by seven delegates.

18. The Local Government may from time to time alter the local limits of the jurisdiction of any jurisdiction of District Courts. Parsi District Matrimonial Court, and may include within such limits any number of districts under its government†

19. Any district, which the Local Government, on account of the fewness of the Parsi inhabitants, shall deem it inexpedient to include within the jurisdiction of any District Matrimonial Court, shall be included within the jurisdiction of the Parsi Chief Matrimonial Court for the territories under such Local Government where there is such Court.‡

20. A seal shall be made for every Court constituted under this Act, and all decrees and orders, and copies of decrees and orders of such Court, shall be sealed with such seal, which shall be kept in the custody of the presiding Judge.

21. The Local Governments shall, in the Presidency-towns and districts subject to their respective governments, respectively appoint persons to be delegates to aid in the adjudication of cases arising under this Act.

* For notification constituting District Courts in Surat, Puna, and in Sind. see Bombay List of Local Rules and Orders Ed 1896 p 27.

† For notification fixing the local limits of the jurisdiction of the Courts constituted at Puna and at Surat under s 17, see Bombay List of Local Rules and Orders, Ed 1896, p 27

‡ Under this power the Settlement of Aden and its dependencies have been included within the jurisdiction of the Parsi Chief Matrimonial Court of Bombay, see *ibid.*, pp 27 and 28.

The persons so appointed shall be Parsis; their names shall be published in the official Gazette; and their number shall, within the local limits of the ordinary original civil jurisdiction of a High Court, be not more than thirty, and, in districts beyond such limits, not more than twenty.

Power to appoint new delegates.

22. The appointment of a delegate shall be for life.

But, whenever a delegate shall die, or be desirous of relinquishing his office, or refuse or become incapable or unfit to act, or be convicted of an offence under the Indian Penal Code* or other law for the time being in force, then and so often the Local Government may appoint any other person being a Parsi to be a delegate in his stead; and the name of the person so appointed shall be published in the official Gazette.

23. All delegates appointed under this Act shall be considered to be public servants within the meaning of the Indian Penal Code.*

24. The delegates selected under sections 16 and 17 to aid in the adjudication of suits under this Act shall be taken under the orders of the presiding Judge of the Court in due rotation from the delegates appointed by the Local Government under section 21.

25. All advocates, vakils, and attorneys-at-law entitled to practise in a High Court shall be entitled to practise in any of the Court constituted under this Act; and all vakils entitled to practise in a District Court shall be entitled to practise in any District Matrimonial Court constituted under this Act.

26. All suits instituted under this Act shall be brought in the Court within the limits of whose jurisdiction the defendant resides at the time of the institution of the suit.

When the defendant shall, at such time, have left British India, such suit shall be brought in the Court at the place where the plaintiff and defendant last resided together.

* Act XLV. of 1860.

IV.—Of Matrimonial Suits—

(a) For a Decree of Nullity.

27. If a Parsi, at the time of his or her marriage, was a lunatic or of habitually unsound mind. In case of lunacy or mental unsoundness. such marriage may, at the instance of his or her wife or husband, be declared null and void upon proof that the lunacy or habitual unsoundness of mind existed at the time of the marriage, and still continues :

Provided that no suit shall be brought under this section if the plaintiff shall, at the time of the marriage, have known that the respondent was a lunatic or of habitually unsound mind.

28. In any case in which consummation of the marriage is, from natural causes, impossible, such marriage may, at the instance of either party thereto, be declared to be null and void. In case of impotency.

(b) For a Decree of Dissolution in Case of Absence.

29. If a husband or wife shall have been continually absent from his or her wife or husband for the space of seven years, and shall not have been heard of as being alive within that time by those persons who would naturally have heard of him or her had he or she been alive, the marriage of such husband or wife may, at the instance of either party thereto, be dissolved. In case of absence for 7 years.

(c) For Divorce or Judicial Separation.

30. Any husband may sue that his marriage may be dissolved, and a divorce granted, on the ground of wife's adultery. On ground of wife's adultery. ed, and a divorce granted, on the ground that his wife has, since the celebration thereof, been guilty of adultery ;

and any wife may sue that her marriage may be dissolved, and a divorce granted, on the ground of husband's adultery &c. ground that, since the celebration thereof, her husband has been guilty of adultery with a married, or fornication with an unmarried, woman not being a prostitute, or of bigamy coupled with adultery, or of adultery coupled with cruelty, or of adultery coupled with wilful desertion for two years or upwards, or of rape, or of an unnatural offence :

In every such suit for divorce on the ground of adultery, the plaintiff shall, unless the Court shall otherwise order, make the person with whom the adultery is alleged to have been committed a co-defendant, and, in any such suit by the husband, the Court may order the adulterer to pay the whole or any part of the costs of the proceedings.

31. If a husband treat his wife with such cruelty of personal violence as to render it, in the judgment of the Court, improper to compel her to live with him, or if his conduct afford her reasonable grounds for apprehending danger to life or serious personal injury, or if a prostitute be openly brought into, or allowed to remain in, the place of abode of a wife by her own husband, she shall be entitled to demand a judicial separation.

32. In a suit for divorce or judicial separation under this act, if the Court be satisfied of the truth of the allegations contained in the plaint, and

that the offence therein set forth has not been condoned, and
that the husband and wife are not colluding together, and
that the plaintiff has not connived at, or been accessory to, the said offence, and

that there has been no unnecessary or improper delay in instituting the suit, and

that there is no other legal ground why relief should not be granted,

then, and in such case, but not otherwise, the Court shall decree a divorce or judicial separation accordingly.

33. In any suit under this Act for divorce or judicial separation, if the wife shall not have an independent income sufficient for her support and the necessary expenses of the suit, the Court, on the application of the wife, may order the husband to pay her, monthly or weekly during the suit, such sum, not exceeding one-fifth of the husband's net income, as the Court, considering the circumstances of the parties, shall think reasonable.

34. The Court may, if it shall think fit, on any decree for divorce or judicial separation, order that the husband shall, to the satisfaction of

Permanent alimony.

the Court, secure to the wife such gross sum, or such monthly or periodical payments of money, for a term not exceeding her life, as, having regard to her own property (if any), her husband's ability and the conduct of the parties, shall be deemed just, and for that purpose may require a proper instrument to be executed by all necessary parties, and suspend the pronouncing of its decree until such instrument shall have been duly executed.

In case any such order shall not be obeyed by her husband, he shall be liable to damages at her suit, and further to be sued by any person supplying her with necessaries during the time of such disobedience, for the price or value of such necessaries

35. In all cases in which the Court shall make any decree or order for alimony, it may direct the Payment of alimony to wife or her trustee. same to be paid either to the wife herself, or to any trustee on her behalf to be approved by the Court, and may impose any terms or restrictions which to the Court may seem expedient, and may, from time to time, appoint a new trustee if, for any reason, it shall appear to the Court expedient so to do.

(d) For Restitution of Conjugal Rights

36. Where a husband shall have deserted, or, without lawful cause, ceased to cohabit with, his wife, or where a wife shall have deserted, or, without lawful cause, ceased to cohabit with, her husband, the party so deserted, or with whom cohabitation shall have so ceased, may sue for the restitution of his or her conjugal rights, and the Court, if satisfied of the truth of the allegations contained in the plaint, and that there is no just ground why relief should not be granted, may proceed to decree such restitution of conjugal rights accordingly.

If such decree shall not be obeyed by the party against whom it is passed, he or she shall be liable to be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.*

37. Notwithstanding anything hereinbefore contained, no suit shall be brought in any Court to enforce any marriage between Parsis, or any contract connected with, or arising out of, any such marriage, if, at the date of the institution of the suit, the husband

No suit to enforce marriage or contract arising out of marriage when husband under 16, or wife under 14, years.

* See 9 Bom. 290.

shall not have completed the age of sixteen years, or the wife shall not have completed the age of fourteen years.

38. In every suit preferred under this Act, the case shall be tried with closed doors should such be the wish of either of the parties.

Suits with closed doors.

39. [*Stamps on complaints and petitions.*] *Repeated by the Court Fees Act (VII. of 1870).*

40. The provisions of the Code of Civil Procedure* shall, so far as the same may be applicable, apply to suits instituted under this Act.

Civil Procedure Code applied.

41. In suits under this Act all questions of law and procedure shall be determined by the presiding Judge; but the decision on the facts shall be the decision of the majority of the delegates before whom the case is tried.

Determination of questions of law, procedure, and fact.

42. An appeal shall lie to the High Court from the decision of any Court established under this Act, whether a Chief Matrimonial Court or a District Matrimonial Court, on the ground of the decision being contrary to some law or usage having the force of law, or of a substantial error or defect in the procedure or investigation of the case which may have produced error or defect in the decision of the case upon the merits, and on no other ground:

Appeal to High Court.

Provided that such appeal be instituted within three calendar months after the decision appealed from shall have been pronounced.

43. When the time hereby limited for appealing against any decree dissolving a marriage shall have expired, and no appeal shall have been presented against such decree, or

when any such appeal shall have been dismissed, or when, in the result of any appeal, any marriage shall be declared to be dissolved, but not sooner,

it shall be lawful for the respective parties thereto to marry again as if the prior marriage had been dissolved by death.

* See Act XIV. of 1882, s. 3 —But see now the new Code (Act V. of 1908), and the section corresponding to s. 3 of the Code of 1882.

V.—Of the Children of the Parties.

44. In any suit under this Act for obtaining a judicial separation or a decree of nullity of marriage, or for dissolving a marriage, the Court may from time to time pass such interim orders, and make such provision in the final decree, as it may deem just and proper, with respect to the custody, maintenance, and education of the children under the age of sixteen years, the marriage of whose parents is the subject of such suit,

and may, after the final decree, upon application by petition Orders as to custody of for this purpose, make from time to time all such orders and provisions with respect to the custody, maintenance, and education of such children as might have been made by such final decree, or by interim orders, in case the suit for obtaining such decree were still pending.

45. In any case in which the Court shall pronounce a decree of divorce or judicial separation for adultery of the wife, if it shall be made to appear to the Court that the wife is entitled to any property, either in possession or reversion, the Court may order such settlement as it shall think reasonable to be made of such property or any part thereof for the benefit of the children of the marriage or any of them.

VI.—Of the Mode of enforcing Penalties under this Act.

46. All offences under this Act may be tried by any officer exercising the powers of a Magistrate unless the period of imprisonment to which the offender is liable shall exceed that which such officer is competent to award under the law for the time being in force in the place in which he is employed.

When the period of imprisonment provided by this Act exceeds the period that may be awarded by such officer, the offender shall be committed for trial before the Court of Session.

47. If any offence, which by this Act is declared to be punishable with fine, or with fine and imprisonment not exceeding six months, shall be committed by any person within the local limits of the ordinary original civil jurisdiction of the High Court, such offence shall be punishable upon summary conviction

by any Presidency Magistrate* of the place at which such Court is held.

48. All fines imposed under the authority of this Act may, in case of non-payment thereof, be levied by distress. Levy of fines by distress. by distress and sale of the offender's moveable property by warrant under the hand of the officer imposing the fine.

49. In case any such fine shall not be forthwith paid, such officer may order the offender to be arrested and kept in safe custody until the return can be conveniently made to such warrant of distress, unless the offender shall give security to the satisfaction of such officer for his appearance at such place and time as shall be appointed for the return of the warrant of distress.

50. If, upon the return of the warrant, it shall appear that no sufficient distress can be had whereon to levy such fine, and the same shall not be forthwith paid, or Imprisonment if no sufficient distress.

in case it shall appear to the satisfaction of such officer, by the confession of the offender or otherwise, that he has not sufficient moveable property whereupon such fine could be levied if a warrant of distress were issued,

any such officer may, by warrant under his hand, commit the offender to prison for any term not exceeding two calendar months when the amount of fine shall not exceed fifty rupees, and for any term not exceeding four calendar months when the amount shall not exceed one hundred rupees, and for any term not exceeding six calendar months in any other case, the commitment to be determinable in each of the cases aforesaid on payment of the amount of fine.

VII.—Miscellaneous.

51. Subject to the provisions contained or referred to in this Act, the High Court shall make such Rules of procedure of Parsi Matrimonial Courts to be made by High Court. rules and regulations concerning the practice and procedure of the Parsi Chief

* See Act V of 1898, s. 3 (2), according to which the expression "Presidency Magistrate" has been substituted for the words "Magistrate of Police" as originally enacted.

ACT IV. OF 1893 *

The Partition Act, 1893.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

Received His Excellency's assent on the 9th March 1893.

An Act to amend the Law Relating to Partition.

WHEREAS it is expedient to amend the law relating to partition; It is hereby enacted as follows:—

Title, extent, commencement, and saving.

1. (1) This Act may be called the Partition Act, 1893;

(2) It extends to the whole of British India; and

(3) It shall come into force at once.

(4) But nothing herein contained shall be deemed to affect any local law providing for the partition of immoveable property paying revenue to Government.

2 Whenever in any suit for partition, in which, if instituted prior to the commencement of this Act, a decree for partition might have been made, it appears to the Court that, by reason of the nature of the property to which the suit relates, or of the number of the shareholders therein, or of any other special circumstance, a division of the property cannot reasonably or

Power to Court to order sale instead of division in partition-suits.

* For Statement of Objects and Reasons, see *Gazette of India*, 1892, Pt. V, p 46, for Report of the Select Committee, see *ibid*, 1893, Pt. V., p 51, for Proceedings in Council, see *ibid*, 1893, Pt. VI, pp 38 and 49.

Act IV. of 1893 has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act (XIII. of 1898).—See Sch. I. and s. 4.

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of 1893.**

conveniently be made, and that a sale of the property and distribution of the proceeds would be more beneficial for all the shareholders, the Court may, if it thinks fit, on the request of any of such shareholders interested individually or collectively to the extent of one moiety or upwards, direct a sale of the property and a distribution of the proceeds.

3. (1) If, in any case in which the Court is requested under the last foregoing section to direct a sale, any other shareholder applies for leave to buy at a valuation the share or shares of the party or parties asking for sale, the Court shall order a valuation of the share or shares in such manner as it may think fit, and offer to sell the same to such shareholder at the price so ascertained, and may give all necessary and proper directions in that behalf.

(2) If two or more shareholders severally apply for leave to buy as provided in sub-section (1), the Court shall order a sale of the share or shares to the shareholder who offers to pay the highest price above the valuation made by the Court.

(3) If no such shareholder is willing to buy such share or shares at the price so ascertained, the applicant, or applicants shall be liable to pay all costs of, or incident to, the application or applications.

4. (1) Where a share of a dwelling-house belonging to an undivided family has been transferred to a person who is not a member of such family, and such transferee sues for partition, the Court shall, if any member of the family being a shareholder shall undertake to buy the share of such transferee, make a valuation of such share in such manner as it thinks fit, and direct the sale of such share to such shareholder, and may give all necessary and proper directions in that behalf.

(2) If, in any case described in sub-section (1), two or more members of the family, being such shareholders, sever-

ally undertake to buy such share, the Court shall follow the procedure prescribed by sub-section (2) of the last foregoing section.

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of 1893.

5. In any suit for partition a request for sale may be made, or an undertaking or application for leave to buy may be given or made, on behalf of any party under disability, by any person authorized to act on behalf of such party in such suit; but the Court shall not be bound to comply with any such request, undertaking, or application, unless it is of opinion that the sale or purchase will be for the benefit of the party under such disability.

6. (1) Every sale under section 2 shall be subject to a reserved bidding, and the amount of such bidding shall be fixed by the Court in such manner as it may think fit, and may be varied from time to time.

(2) On any such sale any of the shareholders shall be at liberty to bid at the sale on such terms as to non-payment of deposit, or as to setting off, or accounting for, the purchase-money or any part thereof, instead of paying the same, as to the Court may seem reasonable.

(3) If two or more persons, of whom one is a shareholder in the property, respectively, advance the same sum at any bidding at such sale, such bidding shall be deemed to be the bidding of the shareholder.

7. Save as hereinbefore provided, when any property is directed to be sold under this Act, the following procedure shall, as far as practicable, be adopted, namely,—

- (a) if the property be sold under a decree or order of the High Court of Calcutta, Madras, or Bombay in the exercise of its original jurisdiction, or of the Court of the Recorder of Rangoon, the procedure of such Court in its original civil jurisdiction for the sale of property by the Registrar;

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of 1893**

(b) if the property be sold under a decree or order of any other Court, such procedure as the High Court may, from time to time, by rules prescribe in this behalf ; and, until such rules are made, the procedure prescribed in the Code of Civil Procedure* in respect of sales in execution of decrees.

8. Any order for sale made by the Court under sections 2, 3, or 4 shall be deemed to be a decree within the meaning of section 2 of the Code of Civil Procedure.*

9. If any suit for partition the Court may, if it shall think fit, make a decree for a partition of part of the property to which the suit relates and a sale of the remainder under this Act.

10. This Act shall apply to suits instituted before the commencement thereof, in which no scheme for the partition of the property has been finally approved by the Court.

* Act XIV of 1882

ACT VII. OF 1882

(The Powers-of-Attorney Act, 1882).*

RECEIVED THE G.-G.'s ASSENT ON THE 24TH FEBRUARY 1882.

An Act to amend the Law relating to Powers-of-Attorney.

Preamble. For the purpose of amending the law relating to Powers-of-Attorney; It is hereby enacted as follows:—

Short title. 1. This Act may be called "The Powers-of-Attorney Act, 1882 ;"

Local extent. It applies to the whole of British India ;

Commencement. and it shall come into force on the first day of May 1882.

2. The donee of a power-of-attorney may, if he thinks fit, execute or do any assurance, instrument, or thing in and with his own name and signature, and his own seal where sealing is required, by the authority of the donor of the power ; and every assurance, instrument, and thing so executed and done shall be as effectual in law as if it had been executed or done by the donee of the power in the name, and with the signature and seal, of the donor thereof.

This section applies to powers of-attorney created by instruments executed either before or after this Act comes into force.

3. Any person making or doing any payment or act in good faith, in pursuance of a power-of-attorney, shall not be liable in respect of the payment or act by reason that, before

* For Statement of Objects and Reasons, see *Gazette of India*, 1881, Pt. V., p. 1473, for Proceedings in Council, see *ibid*, 1881, Supplement, p. 1409, and *ibid*, 1882, Supplement, p. 204.

Act VII of 1882 has been declared in force in the Santhal Parganas by s 3 of the Santhal Parganas Settlement Regulation (III. of 1872) as amended by the Santhal Parganas Laws Regulation (III. of 1886).

the payment or act, the donor of the power had died or become lunatic, of unsound mind, or bankrupt or insolvent, or had revoked the power, if the fact of death, lunacy, unsoundness of mind, bankruptcy, insolvency, or revocation was not, at the time of the payment or act, known to the person making or doing the same.

But this section shall not affect any right against the payee of any person interested in any money so paid ; and that person shall have the like remedy against the payee as he would have had against the payer, if the payment had not been made by him.

This section applies only to payments and acts made or done after this Act comes into force.

4. (a) An instrument creating a power-of-attorney, its execution being verified by affidavit, statutory declaration, or other sufficient evidence, may, with the affidavit or declaration, if any, be deposited in the High Court within the local limits of whose jurisdiction the instrument may be.

(b) A separate file of instruments so deposited shall be kept ; and any person may search that file and inspect every instrument so deposited ; and a certified copy thereof shall be delivered out to him on request.

(c) A copy of an instrument so deposited may be presented at the office, and may be stamped or marked as a certified copy, and, when so stamped or marked, shall become and be a certified copy,

(d) A certified copy of an instrument so deposited shall, without further proof, be sufficient evidence of the contents of the instrument, and of the deposit thereof in the High Court.

(e)* The High Court may, from time to time, make rules for the purposes of this section, and prescribing, with the concurrence of the Local Government, the fees to be taken under clauses (a), (b), and (c).

(f) [*Repealed by Act VI. of 1900.*]

(g) This section applies to instruments creating powers-of-attorney executed either before or after this Act comes into force.

* For instance of rules made and fees prescribed under this clause, see Bombay List of Local Rules and Orders, Vol. I., Ed 1896, p. 165

5. A married woman, whether a minor or not, shall, by virtue of this Act, have power, as if she were unmarried and of full age, by a non-testamentary instrument, to appoint an attorney on her behalf, for the purpose of executing any non-testamentary instrument, or doing any other act which she might herself execute or do; and the provisions of this Act, relating to instruments creating powers-of-attorney, shall apply thereto.

This section applies only to instruments executed after this Act comes into force.

6. [*Act XXVIII. of 1886, s. 39, repealed.*] *Repealed by the Repealing and Amending Act (XII. of 1891).*

ACT XV. OF 1882 :

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ACT XV. OF 1882:

The Presidency Small Cause Courts Act, 1882.*

RECEIVED THE G.-G.'s ASSENT ON THE 17TH MARCH 1882.

An Act to consolidate and amend the Law relating to the Courts of Small Causes established in the Presidency-towns.

WHEREAS it is expedient to consolidate and amend the law relating to the Courts of Small Causes established in the towns of Calcutta, Madras, and Bombay; It is hereby enacted as follows:—

Preamble.

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The Presidency Small Cause Courts Act, 1882:" and it shall come into force on the first day of July 1882.

Short title.

Commencement.

But nothing herein contained shall affect the provisions of the Army Act,† section 151, or the rights or liabilities of any person under any decree passed before that day.

2. On and from the said day, the enactments specified in the First Schedule hereto annexed shall be repealed to the extent mentioned therein.

Repeal of enactments.

But all Courts constituted, appointments made, and securities given, under any of the said enactments, shall, so far as may be, be deemed to have been respectively constituted, made, and given under this Act.

* For Statement of Objects and Reasons, see *Gazette of India*, 1880^t Pt. V, p 376, for first Report of the Select Committee, see *ibid.*, 1881, Pt. V, p 381, for further Report of the Select Committee, see *ibid.*, 1882, Pt. V, p 3; for Proceedings in Council, see *ibid.*, Supplement, 1880, pp. 1394 and 1433; *ibid.*, 1882, Supplement, p 204, and *ibid.*, 1882, Extra Supplement, p. 43.

† Stat. 44 & 45 Vict., c. 58.

‡ In s. 1 (second paragraph), the figures "1881," being repealed by the Repealing and Amending Act (XII. of 1891), have here been omitted.

All references to any enactment hereby repealed, made in References in previous Acts passed prior to the said day, shall, be read, so far as may be practicable, as if made to this Act or the corresponding provisions hereof.

3. In Act No. XXIII. of 1850 (*for securing the Land-revenue of Calcutta*), section 3. for the word and figures, "Act VII., 1847," the words and figures, "The Presidency Small Cause Courts Act, 1882, Chapter VIII.," shall be substituted; the words, "as provided by the said Act," shall be repealed; and, for each of the expressions, "a Commissioner of the Court for recovery of small debts referred to in the said Act" and "the said Commissioners," the words, "the Judges of the Court of Small Causes at Calcutta," shall be substituted.*

4. In this Act, the "Small Cause Court" means the Court of "Small Cause Court" small causes constituted under this Act defined. in the town of Calcutta, Madras, or Bombay, as the case may be; and the expression "*Registrar*" includes a *Deputy Registrar*.†

CHAPTER II.

CONSTITUTION AND OFFICERS OF THE COURT.

5. There shall be, in each of the towns of Calcutta, Madras, Courts of Small Causes and Bombay, a Court, to be called the established. Court of Small Causes of Calcutta, Madras,‡ or Bombay, as the case may be.

6. The Small Cause Court shall be deemed to be a Court subject to the superintendence of the High Court of Judicature at Fort William, Madras, or Bombay, as the case may be, within the meaning of the Letters Patent, respectively, dated the 28th day of December 1865, for such High Courts, and

* The last paragraph of s 3 has been repealed by Act V. of 1908, Sch. V., and therefore omitted.

† In s 4, the words italicized have been added by the 'Presidency Small Cause Courts Act (III of 1899), s. 2.

‡ For Proclamation declaring the constitution of the Madras Court of Small Causes, see Madras List of Local Rules and Orders, Ed 1898, p. 204.

within the meaning of the Code of Civil Procedure;* “and to be a Court subordinate to the High Court within the meaning of section 6 of the Legal Practitioners Act, 1879;†” ‡ and the High Court shall have, in respect of the Small Cause Court, the same powers as it has under the 24th and 25th of Victoria, chapter 104, section 15, in respect of Courts subject to its appellate jurisdiction.

7. Subject to the control of the Governor-General in Council, Appointment, suspension, the Local Government may, from time and removal of Judges to time, by notification in the official Gazette, appoint a person to be Chief Judge, and so many other persons as it thinks fit to be Judges, of the Small Cause Court :

§ Provided that no person shall be appointed to be a Judge of such Court, or be authorized to exercise the powers of a Judge of such Court, unless he is—

(a) an advocate of a High Court of Judicature established under the Indian High Courts Act, 1861,|| or

(b) a vakil or attorney of any such High Court, or

(c) a Judge of a Court of Civil Judicature of not less than five years' standing ;

and that not less than one-third of the persons so appointed, including the Chief Judge, shall be advocates of one of the said High Courts.

The Local Government may, by a like notification, suspend, and, with the previous sanction of the Governor-General in Council, remove any Judge so appointed ¶

Rank and precedence of Judges.

8. The Chief Judge shall be the first of the Judges in rank and precedence.

The other Judges shall have rank and precedence as the Local Government may, from time to time, direct.

* Act XIV. of 1882 —See now the new Code (Act V. of 1905).

† Act XVIII of 1879.

‡ In s. 6 the words quoted have been inserted by the Presidency Small Cause Courts Act (I. of 1895), s. 2.

§ This proviso has been substituted for the one originally enacted by || Stat 24 and 25 Vict, c. 104.

the Presidency Small Cause Courts Act (I. of 1895), s. 3 (2).

¶ The last paragraph of s 7, as originally enacted, being repealed by the Presidency Small Cause Courts Act (I. of 1895), s. 3 (2), has been omitted

8A.* (1) During any absence of the Chief Judge or any Judge of the said Court, or during the period for which any Judge is acting as Chief Judge, the Local Government may appoint any person, having the qualifications required by section 7, to act as Chief Judge or Judge of the said Court, as the case may be.

(2) Every person so appointed shall be authorized to perform the duties of the Chief Judge or a Judge of the said Court until the return of the absent Chief Judge or Judge, or of the Judge acting as Chief Judge, or until the Local Government sees cause to cancel the appointment of such acting Chief Judge or Judge, as the case may be.

Procedure and practice of
Small Cause Court.

9† (1) The High Court may, from time to time, by rules‡ having the force of law,—

(a) prescribe the procedure to be followed and the practice to be observed by the Small Cause Court either in supersession of, or in addition to, any provisions which were prescribed with respect to the procedure or practice of the Small Cause Court on or before the thirty-first day of December 1894, in or under this Act or any other enactment for the time being in force, and

(aa)§ empower the Registrar to hear and dispose of undefended suits and interlocutory applications or matters, and

(b) cancel or vary any such rule or rules.

Rules made under this section may provide, among other matters, for the exercise, by one or more of the Judges of the

* S 8A has been substituted by s 3 of the Presidency Small Cause Courts Act (III of 1899) for s 8A as inserted by s 4 of the Presidency Small Cause Courts Act (I of 1895).

† S 9 has been substituted by the Presidency Small Cause Courts Act (I. of 1895), s 5, for the one originally enacted.

‡ For notifications prescribing such rules in—

Bombay—see Bombay List of Local Rules and Orders, Ed 1896, Vol I, pp 410 and 422.

Madras—see Madras List of Local Rules and Orders, Ed 1898, Vol. I, p 204.

§ Cl (aa) has been added by the Presidency Small Cause Courts Act (III of 1899), s. 4

Small Cause Court, of any powers conferred on the Small Cause Court by this Act or any other enactment for the time being in force.

(2) The law, and any rules and declarations made, or purporting to be made, thereunder, with respect to procedure or practice in force or treated as in force in the Small Cause Court on the thirty-first day of December 1894, shall be in force unless and until cancelled or varied by rules made by the High Court under this section.

10 Subject to such rules, the Chief Judge may, from time to time, make such arrangements as he thinks fit for the distribution of the business of the Court among the various Judges thereof.

11. Save as hereinafter otherwise provided, when two or more of the Judges sitting together differ on any question, the opinion of the majority shall prevail; and, if the Court is equally divided, the Chief Judge, if he is one of the Judges so differing, or, in his absence, the Judge first in rank and precedence of the Judges so differing, shall have the casting voice.

12. The Small Cause Court shall use a seal of such form and dimensions as are for the time being prescribed by the Local Government.*

13 The Local Government may, from time to time, appoint an officer to be called the Registrar of the Court, and to be the chief ministerial officer of the Court;

and the Chief Judge may, from time to time, subject to the control of the Local Government, appoint a *Deputy Registrar* and† as many clerks, bailiffs, and other ministerial officers as may be necessary for the administration of justice by the Court, and for the exercise and performance of the powers and duties conferred

* For notifications under this section in—

Bombay—see Bombay List of Local Rules and Orders, Ed 1896, Vol. I, p 422,

Madras—see Madras List of Local Rules and Orders, Ed. 1898, Vol. I, p 204.

† In s 13 the words italicized have been inserted by the Presidency Small Cause Courts Act (III of 1899), s. 5.

and imposed on it by this Act or any other law for the time being in force.

The Registrar and other officers so appointed shall exercise Powers and duties of such such powers, and discharge such duties of a ministerial nature, as the Chief Judge may, from time to time, by rule direct.

The Chief Judge may suspend or remove any Registrar or other officer so appointed; but the removal of any Registrar or officer drawing a monthly salary of one hundred rupees or upwards shall be subject to the orders of the Local Government.

14. The Local Government may invest the Registrar with the powers of a Judge under this Act for the trial or suits in which the Registrar may be invested with powers of a Judge in suits not exceeding twenty rupees. amount or value of the subject-matter does not exceed twenty rupees. And, subject to the orders of the Chief Judge, any Judge of the Small Cause Court may, whenever he thinks fit, transfer from his own file to the file of the Registrar any suit which the latter is competent to try.

*Explanation.**—For the purposes of this section an application for possession under section 41 shall be deemed to be a suit

15. No Judge or other officer appointed under this Act shall, Judge or other officer not during his continuance as such Judge to practise or trade. or officer, either by himself, or as a partner of any other person, practise or act, either directly or indirectly, as an advocate, attorney, vakil, or other legal practitioner, or be concerned, either on his account, or for any other person, or as the partner of any other person, in any trade or profession.

Any such Judge or officer so practising, acting, or concerned, shall be deemed to have committed an offence under section 168 of the Indian Penal Code.

Nothing herein contained shall be deemed to prohibit any such Judge or officer from being a member of any company incorporated or registered under Royal Charter, Letters Patent, Act of Parliament, or Act of any British Indian Legislature.

* This explanation has been added by the Presidency Small Cause Courts Act (I. of 1895), s. 6.

CHAPTER III.

LAW ADMINISTERED BY THE COURT.

16. All questions, other than questions relating to procedure or practice, which arise in suits or other proceedings under this Act in the Small Cause Court, shall be dealt with and determined according to the law for the time being administered by the High Court in the exercise of its ordinary original civil jurisdiction.

Questions arising in suits, &c., under Act to be decided according to law administered by High Court.

CHAPTER IV.

JURISDICTION IN RESPECT OF SUITS.

17. The local limits of the jurisdiction of each of the Small Cause Courts shall be the local limits for the time being of the ordinary original civil jurisdiction of the High Court.

Local limits of jurisdiction of Court.

18. Subject to the exceptions in section 19, the Small Cause Court shall have jurisdiction to try all suits of a civil nature—

Suits in which Court has jurisdiction.

when the amount or value of the subject-matter does not exceed two thousand rupees; and

(a) the cause of action has arisen, either wholly or in part within the local limits of the jurisdiction of the Small Cause Court, and the leave of the Court has, for reasons to be recorded by it in writing, been given before the institution of the suit; or

(b) all the defendants, at the time of the institution of the suit, actually and voluntarily reside or carry on business, or personally work for gain, within such local limits; or

(c) any of the defendants, at the time of the institution of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, within such local limits, and either the leave of the Court has been given before the institution of the suit, or the defendants who do not reside, or carry on business, or personally work for gain as aforesaid, acquiesce in such institution

Provided that, where the cause of action has arisen wholly within the local limits aforesaid, and the Court refuses to give

leave for the institution of the suit, it shall record in writing its reasons for such refusal.*

Explanation I.—When in any suit the sum claimed is, by a set-off admitted by both parties, reduced to a balance not exceeding two thousand rupees, the Small Cause Court shall have jurisdiction to try such suit.

Explanation II.—Where a person has a permanent dwelling at one place, and also a lodging at another place for a temporary purpose only, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary lodging.

Explanation III.—A Corporation or Company shall be deemed to carry on business at its sole or principal office in British India, or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

18A.† The Small Cause Court may allow a plaintiff, at or before the first hearing of a suit in which a joint and several liability is alleged on a cause of action arising either wholly or in part within the local limits of the jurisdiction of the Court, to abandon the suit as against any defendant who does not reside or carry on business, or personally work for gain, within such local limits, and to sue for a decree against such defendants only as do so reside, carry on business, or personally work for gain.

Suits in which Court has no jurisdiction.

19. The Small Cause Court shall have no jurisdiction in—

(a) suits concerning the assessment or collection of the revenue;

(b) suits concerning any act ordered or done by the Governor-General in Council or the Local Government, or by the Governor-General or a Governor, or by any Member of the Council of the Governor-General or of the Governor of Madras or Bombay, in his official capacity, or by any person by order of the Governor-General in Council or the Local Government;

(c) suits concerning any act ordered or done by any Judge or judicial officer in the execution of his office, or by any person in

* This proviso has been added by the Presidency Small Cause Courts Act (I. of 1895), s. 7

† S. 18A has been inserted by the Presidency Small Cause Courts Act (I. of 1895), s. 8.

pursuance of any judgment or order of any Court or any such Judge or judicial officer ;

(d) suits for the recovery of immoveable property ;

(e) suits for the partition of immoveable property ;

(f) suits for the foreclosure or redemption of a mortgage of immoveable property ;

(g) suits for the determination of any other right to, or interest in, immoveable property ;

(h) suits for the specific performance or rescission of contracts ;

(i) suits to obtain an injunction ;

(j) suits for the cancellation or rectification of instruments ;

(k) suits to enforce a trust ;

(l) suits for a general average loss and suits on policies of insurance on sea-going vessels ;

(m) suits for compensation in respect of collisions on the high seas ;

(n) suits for compensation for the infringement of a patent, copyright, or trade-mark ;

(o) suits for a dissolution of partnership, or for an account of partnership-transactions ;

(p) suits for an account of property and its due administration under the decree of the Court ;

(q) suits for compensation for libel, slander, malicious prosecution, adultery, or breach of promise of marriage ;

(r) suits for the restitution of conjugal rights, for the recovery of a wife, or for a divorce ;

(s) suits for declaratory decrees ;

(t) suits for possession of a hereditary office ;

(u) suits against Sovereign Princes or Ruling Chiefs, or against Ambassadors or Envoys of Foreign States ;

(v) suits on any judgment of a High Court ;

(w) suits the cognizance whereof by the Small Cause Court is barred by any law for the time being in force.

19A * Whenever the Court finds that for want of jurisdiction it cannot finally determine the question at issue in the suit, it may, at any stage of the proceedings, return the plaint to be presented to a Court having jurisdiction to determine the question. When the Court so returns a plaint, it shall comply with the provisions of the second paragraph of section 57 of the Code of Civil Procedure,† and make such order with respect to costs as it may think just, and the Court shall, for the purposes of the Indian Limitation Act, 1877,‡ be deemed to have been unable to entertain the suit by reason of defect of jurisdiction. When a plaint so returned is afterwards presented to a High Court, credit shall be given to the plaintiff for the amount of the court-fee paid in the Small Cause Court in respect of the plaint in the levy of any fees which, according to the practice of the High Court, are credited to the Government.

20. When the parties to a suit, which, if the amount or value of the subject-matter thereof did not exceed two thousand rupees, would be cognizable by the Small Cause Court, have entered into an agreement§ in writing that the Small Cause Court shall have jurisdiction to try such suit, the Court shall have jurisdiction to try the same, although the amount or value of the subject-matter thereof may exceed two thousand rupees.

Every such agreement shall be filed in the Small Cause Court, and, when so filed, the parties to it shall be subject to the jurisdiction of the Court, and shall be bound by its decision in such suit.

21. All suits to which an officer of the Small Cause Court is, as such, a party, except suits in respect of property taken in execution of its process, or the proceeds or value thereof, "and all suits whereof the amount or value of the subject-matter exceeds one thousand rupees,"|| may be instituted in the High Court at the election of the plaintiff as if this Act had not been passed.

* S 19A has been inserted by the Presidency Small Cause Courts Act (I. of 1895), s. 9.

† Act XIV. of 1882—See now the new Code (Act V. of 1908)

‡ Act XV. of 1877—See now the new Limitation Act (IX of 1908).

§ As to additional fee payable on the filing of such agreement, see s.

71, *infra*.

|| The words quoted have been inserted by the Presidency Small Cause Courts Act (I. of 1895), s. 10

22. If any suit cognizable by the Small Cause Court, other than a suit to which section 21 applies, is instituted in the High Court, and if, in such suit, the plaintiff obtains, in the case of a suit founded on contract, a decree for any matter of an amount or value less than "one thousand" * rupees, and in the case of any other suit a decree for any matter of an amount or value of less than three hundred rupees, no costs shall be allowed to the plaintiff;

and, if in any such suit the plaintiff does not obtain a decree, the defendant shall be entitled to his costs as between attorney and client.

The foregoing rules shall not apply to any suit in which the Judge who tries the same certifies that it was one fit to be brought in the High Court.†

CHAPTER V.

PROCEDURE IN SUITS.

23. *Portions of Civil Procedure Code extending to Court.*
[Repealed by Act I. of 1895, s. 12.]

24. Except in cases of set-off under the Code of Civil Procedure, section 111, no written statement shall be received unless required by the Court.

25. When a period of eight days from the decision of a suit has expired without any application for a new trial or re-hearing of such suit having been made, or when any such application has been made within such period, and such application has been refused, or the new trial or re-hearing (as the case may be) has ended, any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit, and placed on the record, shall, unless the document is impounded under section 143 of the Code of Civil Procedure,‡ be entitled to receive back the same :

* The words quoted have been substituted for the words, "two thousand," by the Presidency Small Cause Courts Act (I. of 1895), s. 11.

† Or to any suit under s. 47 of this Act, which see, *infra*.

‡ Act XIV. of 1882 — But see now the new Code (Act V. of 1908).

Provided that a document may be returned at any time before any of such events on such terms as the Court may direct: Provided also that no document shall be returned which, by force of the decree, has become void or useless.

On the return of a document which has been admitted in evidence, a receipt shall be given, by the party receiving it, in a receipt-book to be kept for the purpose.

26 In any suit in which the defendant appears and does not admit the claim, and the plaintiff does not obtain a decree for the full amount of his claim, the Small Cause Court may, in its discretion, order the plaintiff to pay to the defendant, by way of satisfaction for his trouble and attendance, such sum as it thinks fit.

When any claim preferred, or objection made, under section 278 of the Code of Civil Procedure* is disallowed, the Small Cause Court may, in its discretion, order the person preferring or making such claim or objection to pay to the decree-holder, or to the judgment-debtor, or to both, by way of satisfaction as aforesaid, such sum or sums as it thinks fit.

And when any claim or objection is allowed, the Court may award such compensation by way of damages to the claimant or objector as it thinks fit, and the order of the Court awarding or refusing such compensation shall bar any suit in respect of injury caused by the attachment.

Any order under this section may, in default of payment of the amount payable thereunder, be enforced by the person in whose favour it is made against the person against whom it is made as if it were a decree of the Court.

27. Whenever the Small Cause Court issues a warrant for the arrest of a judgment-debtor or the attachment of his property, the decree-holder, or some other person on his behalf, shall accompany the officer of the Court entrusted with the execution of such warrant, and shall point out to such officer the judgment-debtor or the property to be attached, as the case may be.

* Act XIV. of 1882.—See now the new Code (Act V. of 1908)

28. When the judgment-debtor under any decree of the Small Cause Court is a tenant of immoveable

Things attached to immoveable property and removeable by tenant to be deemed moveable in execution.

property, anything attached to such property, and which he might, before the termination of his tenancy, lawfully remove without the permission of his landlord, shall, for the purpose of the execution of such decree, "and for the purpose of deciding all questions arising in the execution of such decree," * be deemed to be moveable property, and may, if sold in such execution, be severed by the purchaser, but shall not be removed by him from the property until he has done to the property whatever the judgment-debtor would have been bound to do to it if he had removed such thing.

29. Whenever any judgment-debtor, who has been arrested,

Discharge of judgment-debtor on sufficient security. or whose property has been seized in execution of a decree of the Small Cause Court, offers security to the satisfaction of such Court for payment of the amount which he has been ordered to pay and the costs, the Court may order him to be discharged, or the property to be released.

30. Whenever it appears to the Small Cause Court that any

Court may in certain cases judgment-debtor under its decree is unable, from sickness, poverty, or other sufficient cause, to pay the amount of the decree, or, if such Court has ordered the same to be paid in instalments, the amount of any instalment thereof, it may, from time to time, for such time, and upon such terms as it thinks fit, suspend the execution of such decree, and discharge the debtor or make such order as it thinks fit.

31. If the judgment-debtor under any decree of the Small

Execution of decree of Small Cause Court has not, within the local Cause Court by other Courts. limits of its jurisdiction, moveable property sufficient to satisfy the decree, the Court may, on the application of the decree-holder, send the decree for execution,—

(a) in the case of execution against immoveable property situate within such local limits—"to the Madras City Civil Court or the High Court of Judicature at Fort William or Bombay, as the case may be ;" †

* The words quoted have been inserted by the Presidency Small Cause Courts Act (IV of 1906), s 2

† In cl. (a) of s. 31, the words quoted have been substituted for the words, "to the High Court," by the Madras City Civil Courts Act (VII. of 1892), s 12.

such property in such person or persons, in such manner, and for such estate, as the said Court shall direct, that is to say,—

when an heir or devisee of such mortgagee shall be out of the jurisdiction of the High Court, or cannot be found ;

when an heir or devisee of such mortgagee shall, upon a demand by a person entitled to require a conveyance of such property, or a duly-authorized agent of such last mentioned person, have stated in writing that he will not convey the same, or shall not convey the same for the space of twenty-eight days next after a proper deed for conveying such property shall have been tendered to him by a person entitled as aforesaid or a duly-authorized agent of such last-mentioned person ;

when it shall be uncertain which of several devisees of such mortgagee was the survivor ;

when it shall be uncertain as to the survivor of several devisees of such mortgagee, or as to the heir of such mortgagee, whether he be living or dead ,

when such mortgagee shall have died intestate as to such property, and without an heir, or shall have died, and it shall not be known who is his heir or devisee ;

and the order of the said High Court made in any one of the foregoing cases shall have the same effect as if the heir or devisee, or surviving devisee, as the case may be, had duly executed a conveyance of the property in the same manner and for the same estate.

20. In every case where the High Court shall, under the Power to appoint person provisions of this Act, be enabled to to convey in certain cases. make an order having the effect of a conveyance of any immoveable property, or having the effect of a release or disposition of the contingent right of any person or persons, born or unborn, it shall also be lawful for the High Court, should it be deemed more convenient, to make an order appointing a person to convey such property, or release or dispose of such contingent right ;

and the conveyance, or release or disposition, of the person so appointed, shall, when in conformity with the terms of the order by which he is appointed, have the same effect in conveying the property, or releasing or disposing of the contingent right, as an order of the High Court would, in the particular case, have had under the provisions of this Act.

35. The Registrar may receive applications for the execution of decrees of any value passed by the Registrar may execute all decrees with the same powers as a Judge. Court, and may commit and discharge judgment-debtors, and make any order in respect thereof which a Judge of the Court might make under this Act.

36. Every decree and order made by the Registrar in any suit or proceeding shall be subject to Decrees and orders of Registrar to be subject to new trial as if made by a Judge. the same provisions in regard to new trial as if made by a Judge of the Court.

CHAPTER VI.*

NEW TRIALS AND APPEALS.

37. Save as otherwise provided by this chapter, or by any other enactment for the time being in force, every decree and order of the General finality of decrees and orders of Small Cause Court. Small Cause Court in a suit shall be final and conclusive.

38. Where a suit has been contested, the Small Cause Court may, on the application of either party, New trial of contested cases. made within eight days from the date of the decree or order in the suit (not being a decree passed under section 522 of the Code of Civil Procedure†), order a new trial to be held, or alter, set aside, or reverse the decree or order, upon such terms as it thinks reasonable, and may, in the meantime, stay the proceedings.

Explanation.—Every suit shall be deemed to be contested in which the decree is made otherwise than by consent of, or in default of appearance by, the defendant.

39 (1) In any suit instituted in a Small Cause Court in Removal of certain causes into High Court. which the amount or value of the subject-matter exceeds the sum of one thousand rupees, the defendant or any one of the defendants may, before the day fixed by the summons for the appearance of the defendant, or within eight days after the service of the summons

* Ch. VI has been substituted for the one originally enacted by the Presidency Small Cause Courts Act (I of 1895), s. 13.

† Act XIV. of 1882.—See now the new Code (Act V. of 1908).

In every case where the High Court shall, under the provisions of this Act, be enabled to make an order vesting in any person or persons the right to transfer any stock transferable in the books of any company or society established or to be established, it shall also be lawful for the High Court, if it be deemed more convenient, to make an order directing the secretary or any officer of such company or society at once to transfer, or join in transferring, the stock to the person or persons to be named in the order;

and this Act shall be a full and complete indemnity and discharge to all companies or societies and their officers and servants for all acts done or permitted to be done pursuant thereto.

21. When any person or persons shall be jointly entitled, with any person out of the jurisdiction of the High Court, or who cannot be found, or concerning whom it shall be uncertain whether he be living or dead, to any stock or Government securities or thing in action upon any trust, it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, or to sue for or recover such thing in action or any interest in respect thereof, either in such person or persons so jointly entitled as aforesaid, or in such last-mentioned person or persons together with any person or persons the said Court may appoint.

When trustees of stock or Government securities joined with trustee out of jurisdiction.

When any sole trustee of any stock, Government securities, or thing in action shall be out of the jurisdiction of the said Court, or cannot be found, or it shall be uncertain whether he be living or dead, it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, or to sue for and recover such thing in action, or any interest in respect thereof, in any person or persons the said Court may appoint.

22. Where any sole trustee of any stock, Government securities, or thing in action shall neglect or refuse to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, or to sue for or recover such thing in action, or any interest in respect thereof, according to the direction of the person absolutely entitled thereto, for the space of twenty-eight days next after a request in writing for that purpose shall have been made to him by the person absolutely entitled thereto, it shall be lawful

according to the practice of the High Court, are payable to the Government.

CHAPTER VII.

RECOVERY OF POSSESSION OF IMMOVEABLE PROPERTY.

41. When any person has had possession of any immoveable property situate within the local limits of the Small Cause Court's jurisdiction, and of which the annual value at a rack-rent does not exceed one thousand rupees, as the tenant, or by permission of another person, or of some person through whom such other person claims,

and such tenancy or permission has determined or been withdrawn,

and such tenant or occupier or any person holding under, or by assignment from him (hereinafter called the occupant), refuses to deliver up such property in compliance with a request made to him in this behalf by such other person,

such other person (hereinafter called the applicant) may apply* to the Small Cause Court for a summons against the occupant calling upon him to show cause, on a day therein appointed, why he should not be compelled to deliver up the property.

42. The summons shall be served on the occupant in the manner provided by the Code of Civil Procedure† for the service of a summons on a defendant.

43. If the occupant does not appear at the time appointed, and show cause to the contrary, the applicant shall, if the Small Cause Court is satisfied that he is entitled to apply under section 41, be entitled to an order addressed to a bailiff of the Court directing him to give possession of the property to the applicant on such day as the Court thinks fit to name in such order.

* For fee on such applications, see s. 71, *infra*.

† See Act XIV. of 1882, ss. 72 to 92 — But see now the new Code (Act V. of 1908), and the provisions thereof corresponding to those of ss. 72-92 of the Code of 1882.

for the High Court to make an order vesting the sole right to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, or to sue for and recover such thing in action, or any interest in respect thereof, in such person or persons as the said Court may appoint.

23. Where any one of the trustees of any stock, Government securities, or thing in action, shall

When one of several trustees of stock, &c, refuses to transfer or receive and pay over dividends.

neglect or refuse to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, or to sue for or recover such thing in action according to the direction of the person absolutely entitled thereto, for the space of twenty-eight days next after a request in writing for that purpose shall have been made to him by such person, it shall be lawful for the High Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, or to sue for and recover such thing in action, in the other trustee or trustees of the said stock, Government securities, or thing in action, or in any person or persons whom the said Court may appoint jointly with such other trustee or trustees.

24. When any stock or Government securities shall be stand-

When stock, &c, standing in name of deceased person.

ing in the sole name of a deceased person, and his executor or administrator shall be out of the jurisdiction of the High Court, or cannot be found, or it shall be uncertain whether such executor or administrator be living or dead, or such executor or administrator shall neglect or refuse to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, according to the direction of the person absolutely entitled thereto, for the space of twenty-eight days next after a request in writing for that purpose shall have been made to him by the person entitled as aforesaid, it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, in any person or persons whom the said Court may appoint.

25. Where any order shall have been made under this Act

Effect of order vesting legal right to transfer stock, &c.

vesting the right to any stock or Government securities in any person or persons appointed by the High Court, such legal right shall vest accordingly; and thereupon the person or persons so appointed are hereby authorized and empowered to execute all deeds and powers-of-attorney, and to perform all acts relating to the

And when the applicant was not, at the time of applying for Application for order in any such order as aforesaid, entitled to such case an act of trespass. the possession of such property, the application for such order, though no possession is taken thereunder, shall be deemed to be an act of trespass committed by the applicant against the occupant.

47. Whenever, on an application being made under section Stay of proceedings on 41, the occupant binds himself with occupant giving security to two sureties, in a bond for such amount as the Small Cause Court thinks reasonable having regard to the value of the property and the probable costs of the suit next hereinafter mentioned, to institute, without delay, a suit in the High Court against the applicant for compensation for trespass, and to pay all the costs of such suit in case he does not prosecute the same, or in case judgment therein is given for the applicant, the Small Cause Court shall stay the proceedings on such application until such suit is disposed of.

If the occupant obtains a decree in any such suit against the applicant, such decree shall supersede the order (if any) made under section 43.

Nothing contained in section 22 shall apply to suits under this section.

48 In all proceedings under this chapter, the, Small Cause Proceedings to be regulated by Code of Civil Procedure. Court shall, as far as may be, and except as herein otherwise provided, follow the procedure prescribed for a Court of first instance by the Code of Civil Procedure *

49. Recovery of the possession of any immoveable property under this chapter shall be no bar to the institution of a suit in the High Court for trying the title thereto.

CHAPTER VIII.

DISTRESSES.

50. This chapter extends to every place within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Fort William, Madras, and Bombay.

* Act XIV of 1882—See now the new Code (Act V. of 1908), superseding the Code of 1882.

transfer of such stock and Government securities into his or their own name or names or otherwise, or relating to the receipt of the dividends, interest, or income thereof, to the extent, and in conformity with the terms, of such order.

All companies and associations whatever, and all persons, shall be equally bound and compellable to comply with the requisitions of such person or persons so appointed as aforesaid, to the extent, and in conformity with the terms, of such order, as such companies, associations, or persons would have been bound and compellable to comply with the requisitions of the person in whose place such appointment shall have been made, and shall be equally indemnified in complying with the requisitions of such person or persons so appointed as they would have been indemnified in complying with the requisitions of the person in whose place such appointment shall have been made.

After notice in writing of any such order of the High Court concerning any stock or Government securities shall have been given, it shall not be lawful for any company or association or any person, having received such notice, to act, upon the requisition of the person in whose place an appointment shall have been made, in any matter relating to the transfer of such stock or Government securities or the payment of the dividends, interest, or income thereof.

26. Where any order shall have been made under this Act by the High Court, vesting the legal right to sue for or recover any thing in action, of any interest in respect thereof, in any person or persons, such legal right shall vest accordingly; and thereupon it shall be lawful for the person or persons so appointed to carry on, commence, and prosecute, in his or their own name or names, any suit or other proceeding for the recovery of such thing in action, in the same manner in all respects as the person in whose place an appointment shall have been made could have sued for or recovered such thing in action.

27. Where any person shall neglect or refuse to transfer any stock or Government securities, or to receive the dividends, interest, or income thereof, or to sue for or recover anything in action, or any interest in respect thereof, for the space of twenty-eight days, order be made vesting right to transfer in such person as Court appoints.

the outer door of which may be open, and may break open the door of any room in such dwelling-house for the purpose of seizing property liable to be seized under this chapter :

Provided that he shall not enter or break open the door of any room appropriated for the *zanana* or residence of women, which, by the usage of the country, is considered private.

57. In pursuance of the warrant aforesaid, the bailiff shall Property which may be seized. seize the moveable property found in or upon the house or premises mentioned in the warrant, and belonging to the person from whom the rent is claimed (hereinafter called the debtor), or such part thereof as may, in the bailiff's judgment, be sufficient to cover the amount of the said rent, together with the costs of the said distress :

Provided that the bailiff shall not seize—

- (a) things in actual use ; or
- (b) tools and implements not in use, where there is other moveable property in or upon the house or premises sufficient to cover such amount and costs ; or
- (c) the debtor's necessary wearing apparel ; or
- (d) goods in the custody of the law.

58. The bailiff may impound or otherwise secure the property so seized in or on the house or premises chargeable with the rent.
Impounding distress.

59. On seizing any property under section 57, the bailiff shall make an inventory of such property, and shall give a notice in writing, to the effect of the Form (marked C) in the Third Schedule hereto annexed, to the debtor, or to any other person upon his behalf in or upon the said house or premises.
Inventory.
Notice of intended appraisal and sale.

The bailiff shall, as soon as may be, file in the Small Cause Court copies of the said inventory and notice.
Copies of inventory and notice to be filed.

60. The debtor, or any other person alleging himself to be the owner of any property seized under this chapter, or the duly-constituted attorney of such debtor or other person, may, at any time within five days from such seizure, apply to any Judge of the said Court to discharge or suspend the warrant, or to release a distrained ar-
Application to discharge or suspend warrant.

days next after an order of the High Court for that purpose shall have been served upon him, it shall be lawful for the said Court to make an order vesting all the right of such person to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, or to sue for and recover such thing in action, or any interest in respect thereof, in such person or persons as the said Court may appoint.

28. When any stock or Government securities shall be

Similar order on like neg- standing in the sole name of a deceased
lect by executor. person, and his executor or administra-
tor shall refuse or neglect to transfer such stock or Government
securities, or receive the dividends, interest, or income thereof, for
the space of twenty-eight days next after an order of the High
Court for that purpose shall have been served upon him, it shall be
lawful for the said Court to make an order vesting the right to
transfer such stock or Government securities, or to receive the di-
vidends, interest, or income thereof, in any person or persons whom
the said Court may appoint.

29. When any order being or purporting to be under this

Legal right to transfer Act shall be made by the High Court,
stock to vest in person ap- vesting the right to any stock or Govern-
pointed by High Court. ment securities, or vesting the right to
transfer any stock or Government securities, or vesting the right to
call for the transfer of any stock or Government securities, in any
person or persons, in every such case the legal right to transfer
such stock or Government securities shall vest accordingly ;

and the person or persons so appointed shall be authorized

Powers of person appoin- and empowered to execute all deeds and
ted. powers-of-attorney, and to perform all
acts relating to the transfer of such stock or Government securities
into his or their own name or names or otherwise, to the extent,
and in conformity with the terms, of the order.

All companies and associations, and all persons, shall be

Obligation to comply with equally bound and compellable to
his requisitions. comply with the requisitions of such
person or persons so appointed as aforesaid, to the extent, and in
conformity with the terms, of such order, as such companies, as-
sociations, or persons would have been bound and compellable to
comply with the requisitions of the person in whose place such
appointment shall have been made.

63. In any case under section 60 or section 61, if the value of the subject-matter in dispute exceeds one thousand rupees, the applicant or claimant may apply to the High Court to transfer the case to itself, and the High Court, on being satisfied that it is expedient that the case should be disposed of by itself, may direct the case to be transferred accordingly, and may thereupon alter or set aside any order passed in the case by a Judge of the Small Cause Court, and may make such order therein as the High Court thinks fit.

Every application under this section shall be made within seven days from the date of the seizure of the subject-matter in dispute.

In granting applications under this section, the High Court may impose such terms as to payment of, or giving security for, costs or otherwise as it thinks fit.

The procedure in cases transferred under this section shall conform, as far as may be, to the procedure in suits before the High Court in the exercise of its ordinary original civil jurisdiction; and orders made under this section may be executed as if they were made in the exercise of such jurisdiction; and every such order awarding or refusing compensation shall bar any suit for the recovery of compensation for any damage caused by the distress which gave rise to the case wherein such order was made.

64. In default of any order to the contrary by a Judge of a Small Cause Court, or by the High Court, any two of the said bailiffs may, at the expiration of five days from a seizure of property under this chapter, appraise the property so seized, and give the debtor notice in writing to the effect of the Form (marked D) in the Third Schedule hereto annexed.

Appraisement.

Notice of sale.

The bailiffs shall file in the Small Cause Court a copy of every notice given under this section.

65. In default of any such order to the contrary, the distressed property shall be sold on the day mentioned in such notice, and the said bailiffs shall, on realizing the proceeds, pay over the amount thereof to the Registrar of the Small Cause Court; and such amount shall be applied first in payment of the costs of the said distress, and then in

Sale.

Application of proceeds.

30. When any minor shall be solely entitled to any stock or Government securities upon any trust, it shall be lawful for the High Court to make an order vesting in any person or persons the right to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof.

When any minor shall be entitled jointly with any other person or persons to any stock or Government securities upon any trust, it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, either in the person or persons jointly entitled with the minor, or in him or them, together with any other person or persons the said Court may appoint.

31.* When a decree or order shall have been made by the High Court directing the sale of any immoveable property for the payment of the debts of a deceased person, every person holding such property, or entitled to a contingent right therein, as heir, or under the will of such deceased debtor, shall be deemed so to hold or be entitled (as the case may be) upon a trust within the meaning of this Act ;

and the High Court is hereby empowered to make an order wholly discharging the contingent right, under the will of such deceased debtor, of any unborn person.

32. When any decree or order shall have been made by the High Court, whether before or after the passing of this Act, directing the sale of any immoveable property for any purpose whatever, every person holding such property, or entitled to a contingent right therein, being a party to the suit or proceeding in which such decree or order shall have been made, and bound thereby, or being otherwise bound by such decree or order, shall be deemed so to hold or be entitled (as the case may be) upon a trust within the meaning of this Act.

* S. 31 is repealed in places to which the Transfer of Property Act (IV. of 1882) extends or is extended.—See Act IV. of 1832, s. 2.

CHAPTER IX.

REFERENCES TO HIGH COURT.

69.* (1) If two or more Judges of the Small Cause Court sit together in any suit, or in any proceeding under Chapter VII. of this Act, and differ in their opinion as to any question of law or usage having the force of law or the construction of a document, which construction may affect the merits, or

if, in any suit or any such proceeding in which the amount or value of the subject-matter exceeds five hundred rupees, any such question arises upon which the Court entertains reasonable doubt, and either party so requires,

the Small Cause Court shall draw up a statement of the facts of the case and the point on which there is a difference of opinion, or on which doubt is entertained, and refer such statement with its own opinion on the point for the opinion of the High Court; and the provisions of sections 619 to 621 of the Code of Civil Procedure† shall, so far as they are applicable, be deemed to apply as if such reference had been made under section 617 of the said Code.

(2) When the Small Cause Court refers any question for the opinion of the High Court as provided in sub-section (1), it shall either reserve judgment or give judgment contingent upon such opinion.

70. When judgment is given under section 69 contingent upon the opinion of the High Court, the party against whom such judgment is given shall at once furnish security, to be approved by the Small Cause Court for the costs of the reference to the High Court, and for the amount of such judgment:

Security to be furnished on such reference by party against whom contingent judgment given.

Provided that no security for the amount of such judgment shall be required in any case in which the Judge who tried the case has ordered such amount to be paid into Court, and the same has been paid accordingly.

* S 69 has been substituted for the original section by the Presidency Small Cause Courts Act (IV. of 1906), s. 4.

† These references to Act XIV. of 1882 shall now be taken to be made to Act V. of 1908.—See section 153 of Act V. of 1908.

In every such case, it shall be lawful for the High Court, if the said Court shall think it expedient for the purpose of carrying such sale into effect, to make an order vesting such property or any part thereof for such estate as the Court shall think fit, either in any purchaser or in such other person as the Court shall direct.

Every such order shall have the same effect as if the person so holding or entitled had been free from all disability, and had duly executed all proper conveyances and assignments of such property for such estate.

33. Where any decree or order shall be made by the High Court for the specific performance of a contract concerning any immoveable property, or for the partition or exchange of any immoveable property, or generally when any decree shall be made for the conveyance of any immoveable property, either in cases arising out of the doctrine of election or otherwise, it shall be lawful for the said Court to declare that any of the parties to the said suit wherein such decree is made are trustees of such property or any part thereof within the meaning of this Act, or to declare concerning the interests of unborn persons, who might claim under any party to the said suit, or under the will or voluntary settlement of any person deceased who was, during his lifetime, a party to the contract or transactions concerning which such decree is made, that such interests of unborn persons are the interests of persons who, upon coming into existence, would be trustees within the meaning of this Act.

Thereupon it shall be lawful for the High Court to make such order or orders as to the estates, rights, and interests of such persons, born or unborn, as the said Court might, under the provisions of this Act, make concerning the estates, rights, and interests of trustees, born or unborn.

34. It shall be lawful for the High Court to make declarations and give directions concerning the manner in which the right to any stock, Government securities, or thing in action vested under the provisions of this Act shall be exercised, and thereupon the person or persons in whom such right shall

74. The Small Cause Court may, whenever it thinks fit, receive Fees and costs of poor and register suits instituted, and applications under section 41 made, by poor persons, and may issue processes on behalf of such persons, without payment, or on a part-payment, of the fees mentioned in sections 71 and 72.

75. The Local Government may, from time to time, by notification* in the official Gazette, vary the amount of the fees payable under sections 71 and 72.

Power to vary fees.

Provided that the amount of such fees shall in no case exceed the amount prescribed by the said sections.

76. The expense of employing an advocate, vakil, attorney, or other legal practitioner, incurred by any party, shall not be allowed as costs in any suit, or in any proceeding under Chapter VII. of this Act, in the Small Cause Court, in which suit or proceeding the amount or value of the subject-matter does not exceed twenty rupees, unless the Court is of opinion that the employment of such practitioner was under the circumstances reasonable.

Expense of employing legal practitioners.

77. Nothing contained in this chapter shall affect the provisions of sections 3, 5, and 25 of the Court Fees Act, 1870,† saved.

Sections 3, 5, and 25 of Court Fees Act, 1870.†

CHAPTER XI.

MISCONDUCT OF INFERIOR MINISTERIAL OFFICERS.

78. The Chief Judge may, by order, fine, in an amount not exceeding one month's salary, any clerk, bailiff, or other inferior ministerial officer of the Court who is guilty of misconduct or neglect in the performance of the duties of his office; and such fine may be deducted from his salary.

Power to fine officers.

* For instances of such notifications in—

Bombay—see Bombay List of Local Rules and Orders, Vol. I., Ed. 1896, pp. 422 and 423,

Madras—see Madras List of Local Rules and Orders, Vol. I., Ed. 1898, pp. 204 and 205

† Act VII of 1870.

be vested shall be compellable to obey such directions and declarations by the same process as that by which other orders under this Act are enforced.

35. In all cases in which it shall be expedient to appoint a new trustee or new trustees, and it shall be found inexpedient, difficult, or impracticable so to do without the assistance of the High Court, it shall be lawful for the said Court to make an order appointing a new trustee or new trustees, whether there be any existing trustee or trustees or not at the time of making such order, and if there be such trustee or trustees, either in substitution for, or in addition to, him or them.

The person or persons, who, upon the making of such order, shall be trustee or trustees, shall have the same rights and powers as he or they would have had if appointed by decree in a suit duly instituted.

36. It shall be lawful for the High Court, upon making any order for appointing a new trustee or new trustees, either by the same or by any subsequent order, to direct that any immoveable property subject to the trust shall vest in the person or persons who, upon the appointment, shall be the trustee or trustees for such estate as the Court shall direct.

Such order shall have the same effect as if the person or persons, who, before such order, was or were the trustee or trustees (if any), had duly executed all proper conveyances of such property for such estate.

37. It shall be lawful for the High Court, upon making any order for appointing a new trustee or new trustees, either by the same or by any subsequent order, to vest the right to call for a transfer of any stock or Government securities subject to the trust, or to receive the dividends, interest, or income thereof, or to sue for or recover anything in action subject to the trust, or any interest in respect thereof, in the person or persons who, upon the appointment, shall be the trustee or trustees.

38. Any such appointment by the High Court of new trustees, and any such conveyance or transfer as aforesaid, shall operate no further or otherwise as a discharge to any former or continuing trustee

offender to be detained in custody; and, at any time before the rising of the Court on the same day, may, if it thinks fit, take cognisance of the offence, and punish the offender with fine which may extend to two hundred rupees, and, in default of payment of such fine, with imprisonment in the civil jail for a term which may extend to one month, unless such fine is sooner paid.

84. In every such case the Court shall record the facts constituting the offence, the statement (if any) made by the offender, and the finding and sentence.

Record in such cases.

If the offence is under section 228 of the Indian Penal Code,* the record must show the nature and stage of the judicial proceeding in which the Court, when interrupted or insulted, was sitting, and the nature of the interruption or insult offered.

85 If the Court considers that a person accused of any offence referred to in section 83, and committed in its view or presence, should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, or if the Court is, for any other reason, of opinion that the case should not be disposed of under section 83, the Court, after recording the facts constituting the offence and the statement of the accused as hereinbefore provided, may forward the case to a Presidency Magistrate, and may require security to be given for the appearance of such accused person before such Magistrate, or if sufficient security is not given, may forward him under custody to such Magistrate.

Procedure where Court considers that case should not be dealt with under section 83.

Such Magistrate shall deal with the accused person in the manner provided by the Code of Criminal Procedure,† and may sentence the offender to punishment as provided in the section of the Indian Penal Code* under which he is charged

86. When the Court has, under section 83 or section 85, punished an offender, or forwarded him to a Presidency Magistrate for trial, for refusing or omitting to do anything which he was lawfully required to do, or for any intentional insult or interruption, the Court may, in its discretion, discharge the offender, or remit the punishment on

Discharge of offender on submission or apology.

* Act XLV. of 1860.

† See now Act V. of 1898, Ch. XXXV. and s. 3 (1).

than an appointment of new trustees under any power for that purpose contained in any instrument would have done.

39. An order under any of the hereinbefore-contained provisions for the appointment of a new trustee or new trustees, or concerning any immoveable property, stock, or Government securities, or thing in action subject to a trust, may be made upon the application of any person beneficially interested in such immoveable property, stock, Government securities, or thing in action, whether under disability or not, or upon the application of any person duly appointed as a trustee thereof; and an order under any of the provisions hereinbefore contained, concerning any immoveable property, stock, Government securities, or thing in action subject to a mortgage, may be made on the application of any person beneficially interested in the equity of redemption, whether under disability or not, or of any person interested in the moneys secured by such mortgage.

40. When any person shall deem himself entitled to an order under any of the provisions hereinbefore contained, it shall be lawful for him to present a petition to the High Court for such order as he may deem himself entitled to, and he may give evidence by affidavit or otherwise in support of such petition before the said Court, and may serve such person or persons with notice of such petition as he may deem entitled to service thereof.

41. Upon the hearing of any such petition, it shall be lawful for the said High Court, should it be deemed necessary, to direct a reference to one of the Judges of the Court to inquire into any facts which require such an investigation, or it shall be lawful for the said Court to direct such petition to stand over, to enable the petitioner to adduce evidence or further evidence before the Court, or to enable notice or any further notice of such petition to be served upon any person or persons.

42. Upon the hearing of any such petition, it shall be lawful for the High Court to dismiss such petition with or without costs, or to make an order thereupon in conformity with the provisions of this Act.

ments in such form and manner as such Government or Court, as the case may be, thinks fit.

92. The Small Cause Court shall, at the commencement of each year, draw up a list of holidays and vacations to be observed in the Court, and shall submit the same for the approval of the Local Government.

Such list, when it has received such approval, shall be published in the local official Gazette, and the said holidays and vacations shall be observed accordingly.

93. The Governor-General and Members of his Council, the Certain persons exempt from arrest by Court. Governors of Fort St. George and Bombay, and the Members of their respective Councils, the Lieutenant-Governor of Bengal, and the Chief Justices and Judges of the High Courts established under the twenty-fourth and twenty-fifth of Victoria, Chapter 104,* shall not be liable to arrest by order of the Small Cause Court.

No suit to lie upon decree of Court.

94. No suit shall lie on any decree of the Small Cause Court.

95 Any person ordered by the Small Cause Court to be imprisoned may be imprisoned in such place as the Local Government, from time to time, appoints in this behalf.

96. If any person against whom any suit is brought for anything purporting to be done by him under this Act has, before the institution of the suit, tendered sufficient amends to the plaintiff, the plaintiff shall not recover.

97. All prosecutions for anything purporting to be done under this Act must be commenced within three months after the offence was committed.

* The Indian High Courts Act, 1861.

43. Whensoever in any cause or matter, either by the evidence adduced therein, or by the admissions of the parties, or by report of one of the Judges of the Court the facts necessary for an order under this Act shall appear to the High Court to be sufficiently proved, it shall be lawful for the said Court, either upon the hearing of the said cause, or of any petition or application in the said cause or matter, to make such order under this Act.

44. Whenever any order shall be made under this Act by the High Court for the purpose of conveying any immoveable property, or for the purpose of releasing or disposing of any contingent right, and such order shall be founded on an allegation of the personal incapacity of a trustee or mortgagee, or an allegation that a trustee or the heir or devisee of a mortgagee is out of the jurisdiction of the High Court, or cannot be found, or that it is uncertain which of several trustees, or which of several devisees of a mortgagee, was the survivor, or whether the last trustee, or the heir or last surviving devisee of a mortgagee, be living or dead, or on an allegation that any trustee or mortgagee has died intestate without an heir, or has died, and it is not known who is his heir or devisee, then, in any of such cases, the fact that the High Court has made an order upon such an allegation shall be conclusive evidence of the matter so alleged in any Court of Civil Judicature upon any question as to the legal validity of the order :

Provided always that nothing herein contained shall prevent the High Court directing a re-conveyance of any immoveable property conveyed or assigned by any order under this Act, or a re-disposition of any contingent right, conveyed or disposed of by such order ; and it shall be lawful for the said Court to direct any of the parties to any suit concerning such property or contingent right to pay any costs occasioned by the order under this Act when the same shall appear to have been improperly obtained.

45. It shall be lawful for the High Court to exercise the powers herein conferred for the purpose of vesting any immoveable property, stock, Government securities, or thing in action in the trustee or trustees of any charity or society, over which charity or society the High Court would have jurisdiction upon suit duly instituted, whether

THE FIRST SCHEDULE—(continued).

(See section 2.)

ENACTMENTS REPEALED—(continued).

C.—Act of the Governor of Bombay in Council.

Number and year.	Subject.	Extent of repeal.
VI. of 1864 ...	For the better regulation of the diet-money of persons imprisoned by the Bombay Court of Small Causes.	So much as has not been repealed.

subject to the charge, or affixed on some conspicuous part of the property, require such last-mentioned person or persons to appoint a fit and proper person as receiver, and, if no such appointment be made within ten days after such requisition, then may in writing appoint any person he may think fit.

No person shall be ineligible for the office of receiver merely because he is an officer of the High Court.

13.* Every receiver appointed as aforesaid shall be deemed

Receiver deemed to be to be the agent of the person entitled to the agent of the mortgagor the property subject to the charge, who shall be solely responsible for his acts or defaults unless otherwise provided for in the charge.

14.† Every receiver appointed as aforesaid shall have power

Powers of receiver. to demand and recover and give effectual receipts for all the rents, issues, and profits of the property of which he is appointed receiver by suit, distress, or otherwise, in name either of the person entitled to the property subject to the charge, or of the person entitled to the money secured by the charge, to the full extent of the estate or interest which the person who created the charge had power to dispose of.

15 ‡ Every receiver appointed as aforesaid may be removed

Receiver may be removed, by the like authority, or on the like requisition as before provided with respect to the original appointment of a receiver, and new receivers appointed and new receivers may be appointed from time to time.

16 § Every receiver appointed as aforesaid shall be entitled

Receiver to receive commission not exceeding 5 per cent. to retain out of any money received by him, in lieu of all costs, charges, and expenses whatsoever, such a commission, not exceeding five *per centum* on the gross amount of all money received, as shall be specified in his appointment, and if no amount shall be so specified, then five *per centum* on such gross amount.

* Compare Stat. 23 & 24 Vict., c. 145, s. 18.

† Compare *ibid.*, s. 19.

‡ Compare *ibid.*, s. 20.

§ Compare *ibid.*, s. 21.

THE THIRD SCHEDULE—(continued).

FORMS—(continued).

C.

(See section 59.)

In the Small Cause Court for .

FORM OF INVENTORY AND NOTICE.

(State particulars of property seized.)

Take notice that I have this day seized the moveable property contained in the above inventory for the sum of Rs. being the amount of morth's rent due to A, B at last, and that, unless you pay the amount thereof, together with the costs of this distress, within five days from the date hereof, or obtain an order from one of the Judges or the Registrar of the Small Cause Court to the contrary, the same will be appraised and sold pursuant to the provisions of Chapter VIII. of the Presidency Small Cause Courts Act, 1882. Dated the day of 18 .

(Signed) E. F.,
Bailiff and Appraiser.

To C. D.

D.

(See section 64.)

In the Small Cause Court for .

Take notice that we have appraised the moveable property seized on the day of , under the provisions of Chapter VIII. of the Presidency Small Cause Courts Act, 1882, of which seizure and property a notice and inventory were duly served upon you [or upon on your behalf, *as the case may be*] under date the , and that the said property will be sold on the [two clear days at least after the date of the notice] at pursuant to the provisions of the said Act. Dated this day of 18 .

(Signed) E. F.,
 G. H.,
Bailiffs and Appraisers

To C. D.

17.* Every receiver appointed as aforesaid shall, if so Receiver to insure if directed in writing by the person entitled to the money secured by the charge, insure and keep insured from loss or damage by fire out of the money received by him the whole or any part of the property included in the charge which is in its nature insurable.

18.† Every receiver appointed as aforesaid shall pay and Application of moneys apply all the money received by him received by him. in the first place in discharge of Government revenue, and of all taxes, rates, and assessments whatsoever, and in payment of his commission as aforesaid, and of the premiums on the insurances, if any; and in the next place in payment of all the interest accruing due in respect of any principal money then charged on the property over which he is receiver, or on any part thereof; and, subject as aforesaid, shall pay all the residue of such money to the person for the time being entitled to the property subject to the charge, his executors, administrators, or assigns.

19.‡ The powers and provisions contained in sections 6 to 18 of this Act, both inclusive, relate This part to relate to charges by way of mortgage only. secure money advanced or to be advanced by way of loan, or to secure an existing or future debt.

Leases.

20.§ Where any license to do any act which, without such Restriction on effect of license, would create a forfeiture, or give license to alien. a right to re-enter, under a condition or power reserved in any lease heretofore granted, or to be hereafter granted, shall, at any time after this Act comes into operation, be given to any lessee or his assigns, every such license shall, unless otherwise expressed, extend only to the permission actually given, or to any specific breach of any proviso or covenant made or to be made, or to the actual assignment, under-lease, or other matter thereby specifically authorized to be done, but not

* Compare Stat. 23 & 24 Vict., c. 145, s. 22.

† Compare *ibid.*, s. 23.

‡ Compare *ibid.*, s. 24.

§ Compare the Law of Property Amendment Act, 1859 (Stat. 22 & 23 Vict., c. 35), s. 1.

THE FOURTH SCHEDULE.

(See section 72.)

FEES FOR SUMMONSES AND OTHER PROCESSES.

When the amount or value of the subject- matter exceeds	But does not exceed	Fee for sum- monses.	Fee for other processes.
Rs.	Rs.	Rs. A. P.	Rs A. P.
0	10	0 2 0	0 2 0
10	20	0 4 0	0 4 0
20	50	0 8 0	0 8 0
50	100	1 0 0	1 0 0
100	200	1 4 0	2 0 0
200	300	1 8 0	3 0 0
300	400	1 12 0	4 0 0
400	500	2 0 0	5 0 0
500	600	2 4 0	6 0 0
600	700	2 8 0	7 0 0
700	800	3 12 0	8 0 0
800	900	3 0 0	9 0 0
900	1,000	3 4 0	10 0 0
1,000	1,100	3 6 0	10 8 0
1,100	1,200	3 8 0	11 0 0
1,200	1,300	3 10 0	11 8 0
1,300	1,400	3 12 0	12 0 0
1,400	1,500	3 14 0	12 8 0
1,500	1,600	4 0 0	13 0 0
1,600	1,700	4 2 0	13 8 0
1,700	1,800	4 4 0	14 0 0
1,800	1,900	4 6 0	14 8 0
1,900	2,000	4 8 0	15 0 0

so as to prevent any proceeding for any subsequent breach (unless otherwise specified in such license);

and all rights under covenants and powers of forfeiture and re-entry in the lease contained shall remain in full force, and shall be available as against any subsequent breach of covenant or condition, assignment, under-lease, or other matter not specifically authorized or made dispunishable by such license, in the same manner as if no such license had been given; and the condition or right of re-entry shall be and remain in all respects as if such license had not been given, except in respect of the particular matter authorized to be done.

21.* Where in any lease heretofore granted or to be granted, there is or shall be a power or condition of re-entry on assigning or under-letting, or doing any other specified act without license, and a license, at any time after the passing of this Act, shall be given to one of several lessees or co-owners to assign or under-let his share or interest, or to do any other act prohibited to be done without license; or shall be given to any lessee or owner, or any one of several lessees or owners, to assign or under-let part only of the property, or to do any other such act as aforesaid in respect of part only of such property, such license shall not operate to destroy or extinguish the right of re-entry in case of any breach of the covenant or condition by the co-lessee or co-lessees or owner or owners, of the other shares or interests in the property, or by the lessee or owner of the rest of the property (as the case may be) over or in respect of such shares or interests or remaining property, but such right of re-entry shall remain in full force over or in respect of the shares or interests or property not the subject of such license.

22.† Where the reversion upon a lease is severed, and the rent or other reservation is legally apportioned, the assignee of each part of the reversion shall, in respect of the apportioned rent or other reservation allotted or belonging to him, have and be entitled to the benefit of all conditions or powers of re-entry for non-payment of the original rent or other reservation, in like manner as if such conditions or powers had been reserved to him as incident to his part of the reversion in respect of the apportioned rent or other reservation allotted or belonging to him.

* Compare Stat. 22 and 23 Vict, c. 35, s. 2.

† Compare *ibid*, s. 3.

THE PRESIDENCY-TOWNS INSOLVENCY ACT, 1909 (Act No. III. of 1909).

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23* The release from a rent-charge of part of the immove-

able property charged therewith shall
Release of part of land charged, not to be an ex- not extinguish the whole rent-charge, but
tinguishment. shall operate only to bar the right to
recover any part of the rent-charge out of the property released,
without prejudice, nevertheless, to the rights of all persons interested
in the property remaining unreleased, and not concurring in or
confirming the release.

Powers.

24.† A deed hereafter executed in the presence of, and at-
Mode of execution of tested by, two or more witnesses in the
powers. manner in which deeds are ordinarily
executed and attested, shall, so far as respects the execution and
attestation thereof, be a valid execution of a power of appointment
by deed or by any instrument in writing not testamentary, notwith-
standing it shall have been expressly required that a deed or instru-
ment in writing made in exercise of such power should be executed
or attested with some additional or other form of execution or
attestation or solemnity :

Provided always that this provision shall not operate to defeat
any direction in the instrument creating the power, that the consent
of any particular person shall be necessary to a valid execution, or
that any act shall be performed in order to give validity to any
appointment, having no relation to the mode of executing and at-
testing the instrument ;

and nothing herein contained shall prevent the donee of a
power from executing it conformably to the power by writing or
otherwise than by an instrument executed and attested as an
ordinary deed ; and, to any such execution of a power, this provi-
sion shall not extend.

25.‡ Where, by any will which shall come into operation
after the passing of this Act, the testator
Legatee in trust may raise shall have charged his immoveable prop-
money by sale, notwith- erty, or any specific portion thereof,
standing want of express with the payment of his debts, or with
power in will. the payment of any legacy or other specific sum of money, and shall

* Compare Stat. 22 & 23 Vict., c. 35, s. 10.

† Compare *ibid.*, s. 12.

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have bequeathed the property so charged to any trustee or trustees for the whole of his estate or interest therein, and shall not have made any express provision for the raising of such debt, legacy, or sum of money out of such property, it shall be lawful for the said legatee or legatees in trust, notwithstanding any trusts actually declared by the testator, to raise such debts, legacy, or money as aforesaid by sale and absolute disposition by public auction or private contract of the said property or any part thereof, or by a mortgage of the same, or partly in one mode and partly in the other ;

and any deed or deeds of mortgage so executed may reserve such rate of interest, and fix such period or periods of repayment, as the person or persons executing the same shall think proper.

26.* The powers conferred by the last-preceding section

Powers given by last section shall extend to all and every person or persons in whom the property bequeathed in trust shall for the time being be vested by survivorship, or under the laws relating to intestate or testamentary succession, or to any person or persons who may be appointed under any power in the will, or by the High Court, to succeed to the trusteeship vested in such legatee or legatees in trust as aforesaid.

27.† If any testator who shall have created such a charge as

Executors to have power of raising money, &c, shall not have bequeathed the property charged as aforesaid in such terms as that, his whole estate and interest therein shall become vested in any trustee or trustees, the executor or executors (if any) for the time being named in such will shall have the same or the like power of raising the said moneys as is heretofore vested in the legatee or legatees in trust of the said property, and such power shall from time to time devolve on, and become vested in, the person or persons (if any) in whom the executorship shall for the time being be vested.

28.‡ Purchasers or mortgagees shall not be bound to enquire

Purchasers, &c, not whether the powers conferred by sections 25, 26, and 27 of this Act, or any powers. of them, shall have been duly and correctly exercised by the person or persons acting in virtue thereof.

* Compare Stat 22 & 23 Vict, c. 35, s. 15.

† Compare *ibid*, s 16.

‡ Compare *ibid*, s. 17.

THE PRESIDENCY-TOWNS INSOLVENCY ACT 1909

(Act No. III. of 1909).

(RECEIVED THE G.-G.'s ASSENT ON THE 12TH MARCH 1909.)

An Act to amend the Law of Insolvency in the Presidency-towns and the Town of Rangoon.

WHEREAS it is expedient to amend the law relating to insolvency in the Presidency-towns and the town of Rangoon; It is hereby enacted as follows:—

PRELIMINARY.

Short title and commencement.

1. (1) This Act may be called the Presidency-towns Insolvency Act, 1909.

(2) It shall come into force on the first day of January 1910.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

- (a) "creditor" includes a decree-holder;
- (b) "debt" includes a judgment-debt, and "debtor" includes a judgment-debtor;
- (c) "Official Assignee" includes an acting Official Assignee;
- (d) "prescribed" means prescribed by rules;
- (e) "property" includes any property over which or the profits of which any person has a disposing power which he may exercise for his own benefit;
- (f) "rules" means rules made under this Act;
- (g) "secured creditor" includes a landlord who, under any enactment for the time being in force, has a charge on land for the rent of that land;
- (h) "the Court" means the Court exercising jurisdiction under this Act; and
- (i) "transfer of property" includes a transfer of any interest therein and any charge created thereon.

Inheritance.

29.* In cases of intestacies occurring before the first day of January 1866, where there shall be a total failure of heirs of the purchaser, or where any immoveable property shall be descendible as if an ancestor had been the purchaser thereof, and there shall be a total failure of the heirs of such ancestor, then and in every such case the property shall descend, and the descent shall thenceforth be traced from the person last entitled to the property as if he had been the purchaser thereof.

† This section shall be read as part of Act No. XXX. of 1839† (for the amendment of the law of inheritance).

Assignment of Moveables and Terms for Years.

30.§ Any person shall have power to assign moveable property now by law assignable, terms for years of immoveable property, and estates by *elegit*, directly to himself and another person or other persons or corporation, by the like means as he might assign the same to another.

Purchasers

31.|| The *bond-fide* payment to, and the receipt of, any person Not bound to see to to whom any purchase or mortgage-application of purchase-money shall be payable upon any express or implied trust shall effectually discharge the person paying the same from seeing to the application, or being answerable for the misapplication, thereof.

Investment of Trust-funds.

32.¶ Trustees having trust-money in their hands, which it is On what securities trust- their duty to invest at interest, shall be funds may be invested. at liberty at their discretion to invest

* Compare Stat. 22 & 23 Vict., c. 35, s. 19.

† Compare *ibid.*, s. 20.

‡ Repealed, except as to descents before 1866, by Act VIII. of 1868.

§ Compare Stat. 22 & 23 Vict., c. 35, s. 21.

|| Compare *ibid.*, s. 23, omitting the limiting clause—"unless the contrary shall be expressly declared by the instrument creating the trust or security."

¶ Compare Stat. 23 & 24 Vict., c. 145, s. 25. Ss 32 to 37 shall be repealed in the territories to which the Indian Trusts Act (II. of 1882) for the time being extends or is extended.—See s. 2 of that Act.

(e) to examine any person summoned by the Court under section 36.

(g) An officer appointed under this section shall not have power to commit for contempt of Court.

7. Subject to the provisions of this Act, the Court shall have full power to decide all questions of priorities, and all other questions whatsoever, whether of law or fact, which may arise in any case of insolvency coming within the cognizance of the Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice, or making a complete distribution of property in any such case.

Appeals.

Appeals in insolvency. 8. (1) The Court may review, rescind, or vary any order made by it under its insolvency jurisdiction.

(2) Orders in insolvency matters shall, at the instance of any person aggrieved, be subject to appeal as follows, namely:—

(a) an appeal from an order made by an officer of the Court empowered under section 6 shall lie to the Judge assigned under section 4 for the transaction and disposal of matters in insolvency, and no further appeal shall lie except by leave of such Judge;

(b) save as otherwise provided in clause (a), an appeal from an order made by a Judge in the exercise of the jurisdiction conferred by this Act shall lie in the same way, and be subject to the same provisions, as an appeal from an order made by a Judge in the exercise of the ordinary original civil jurisdiction of the Court.

PART II.

PROCEEDINGS FROM ACT OF INSOLVENCY TO DISCHARGE.

Acts of Insolvency.

Acts of insolvency.

9. A debtor commits an act of insolvency in each of the following cases, namely:—

the same in any Government securities, and such trustees shall also be at liberty, at their discretion, to call in any trust-funds invested in any other securities than as aforesaid, and to invest the same on any such securities as aforesaid, and also from time to time, at their discretion, to vary any such investments as aforesaid for others of the same nature :

Provided always that no such original investment as aforesaid and no such change of investment as aforesaid shall be made where there is a person under no disability entitled in possession to receive the income of the trust-fund for his life, or for a term of years determinable with his life, or for any greater estate, without the consent in writing of such person.

Trustees and Executors.

33*† In all cases where any property is held by trustees in trust for a minor, either absolutely or contingently on his attaining majority, or come of property of minors, contingently on his attaining majority, or &c., for their maintenance on the occurrence of any event previously to his attaining majority, it shall be lawful for such trustees, at their sole discretion, to pay to the guardians (if any) of such minor, or otherwise to apply for or towards the maintenance or education of such minor, the whole or any part of the income to which such minor may be entitled in respect of such property, whether there be any other fund applicable to the same purpose, or any other person bound by law to provide for such maintenance or education, or not ;

and such trustees shall accumulate all the residue of such income by way of compound interest, by investing the same and the resulting income thereof from time to time in proper securities for the benefit of the person who shall ultimately become entitled to the property from which such accumulations shall have arisen :

Provided always that it shall be lawful for such trustees at any time, if it shall appear to them expedient, to apply the whole or any part of such accumulations as if the same were part of the income arising in the then current year.

* Ss. 32 to 37 shall be repealed in the territories to which the Indian Trusts Act (II. of 1882) for the time being extends or is extended.—*Secs. 2 of that Act.*

† Compare Stat. 23 & 24 Vict., c. 145, s. 26.

Explanation.—The presentation of a petition by the debtor shall be deemed an act of insolvency within the meaning of this section, and, on such petition, the Court may make an order of adjudication.

11. The Court shall not have jurisdiction to make an order of adjudication, unless—

Restrictions on jurisdiction.

- (a) the debtor is, at the time of the presentation of the insolvency petition, imprisoned in execution of the decree of a Court for the payment of money in any prison to which debtors are ordinarily committed by the Court in the exercise of its ordinary original jurisdiction; or
- (b) the debtor, within a year before the date of the presentation of the insolvency petition, has ordinarily resided or had a dwelling-house, or has carried on business, either in person or through an agent, within the limits of the ordinary original civil jurisdiction of the Court; or
- (c) the debtor personally works for gain within those limits; or,
- (d) in the case of a petition by or against a firm of debtors, the firm has carried on business, within a year before the date of the presentation of the insolvency petition, within those limits.

Conditions on which creditor may petition.

12. (1) A creditor shall not be entitled to present an insolvency petition against a debtor unless—

- (a) the debt owing by the debtor to the creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to such creditors, amounts to five hundred rupees, and
- (b) the debt is a liquidated sum payable either immediately, or at some certain future time, and
- (c) the act of insolvency on which the petition is grounded has occurred within three months before the presentation of the petition.

(2) If the petitioning creditor is a secured creditor, he shall, in his petition, either state that he is willing to relinquish his security

34.*† Whenever any trustee, either original or substituted, and whether appointed by any High Court or otherwise, shall die, or be six months absent from British India, or desire to be discharged from, or refuse or become unfit or incapable to act in, the trusts or powers in him reposed before the same shall have been fully discharged and performed, it shall be lawful for the person or persons nominated for that purpose by the deed, will, or other instrument creating the trust (if any), or if there be no such person, or no such person able and willing to act, then for the surviving or continuing trustees or trustee for the time being, or the acting executors or executor or administrators or administrator of the last surviving and continuing trustee, or for the retiring trustees if they shall all retire simultaneously, or for the last retiring trustee, or where there are two or more classes of trustees of the instrument creating the trust, then for the surviving or continuing trustees or trustee of the class in which any such vacancy or disqualification shall occur (and for this purpose any refusing or retiring trustee shall, if willing to act in the execution of the power, be considered a continuing trustee), by writing to appoint any other person or persons to be a trustee or trustees in the place of the trustee or trustees so dying, or being absent from British India, or desiring to be discharged, or refusing, or becoming unfit or incapable, to act as aforesaid.

So often as any new trustee or trustees shall be so appointed as aforesaid, all the trust-property (if any), which, for the time being, shall be vested in the surviving or continuing trustees or trustee, or in the heirs, executors, or administrators of any trustee, shall, with all convenient speed, be conveyed and transferred, so that the same may be legally and effectually vested in such new trustee or trustees, either solely, or jointly with the surviving or continuing trustees or trustee, as the case may require.

Every new trustee to be appointed as aforesaid, as well before as after such conveyance or transfer as aforesaid, and also every trustee appointed by any High Court, either before or after the passing of this Act, shall have the same powers, authorities, and discretions, and

* Compare Stat. 23 & 24 Vict., c 145, s. 27.

† See foot-note (*) at the last preceding page.

(7) Where proceedings are stayed, the Court may, if, by reason of the delay caused by the stay of proceedings or for any other cause, it thinks just, make an order of adjudication on the petition of some other creditor, and shall thereupon dismiss, on such terms as it thinks just, the petition on which proceedings have been stayed as aforesaid.

(8) A creditor's petition shall not, after presentation, be withdrawn without the leave of the Court.

Conditions on which debtor may petition.

14. A debtor shall not be entitled to present an insolvency petition unless—

- (a) his debts amount to five hundred rupees, or
- (b) he has been arrested and imprisoned in execution of the decree of any Court for the payment of money, or
- (c) an order of attachment in execution of such a decree has been made, and is subsisting against his property.

15. (1) A debtor's petition shall allege that the debtor is unable to pay his debts, and, if the debtor proves that he is entitled to present the petition, the Court may thereupon make an order of adjudication unless, in its opinion, the petition ought to have been presented before some other Court having insolvency jurisdiction.

(2) A debtor's petition shall not, after presentation, be withdrawn without the leave of the Court.

16. The Court may, if it is shown to be necessary, for the protection of the estate, at any time after the presentation of an insolvency petition, and before an order of adjudication is made, appoint the Official Assignee to be *interim* receiver of the property of the debtor, or of any part thereof, and direct him to take immediate possession thereof or any part thereof, and the Official Assignee shall thereupon have such of the powers conferable on a Receiver appointed under the Code of Civil Procedure, 1908,* as may be prescribed.

* Act V. of 1908.

shall, in all respects, act as if he had been originally nominated a trustee by the deed, will, or other instrument (if any) creating the trust.

The Official Trustee may, with his consent, and by the order of Appointment of Official the High Court, be appointed under Trustee to be a trustee this section in any case in which only one trustee is to be appointed, and such trustee is to be the sole trustee.

35*† The power of appointing new trustees heretofore contained may be exercised in cases where a trustee nominated in a will has died in the lifetime of the testator.

36 †‡ The receipts in writing of any trustees or trustee for any money payable to them or him by reason, or in the exercise, of any trusts or powers reposed or vested in them or him, shall be sufficient discharges for the money therein expressed to be received, and shall effectually exonerate the persons paying such money from seeing to the application thereof, or from being answerable for any loss or misapplication thereof.

37.†§ Every deed, will, or other instrument creating a trust, either expressly or by implication, shall, without prejudice to the clauses actually contained therein, be deemed to contain a clause in the words, or to the effect, following, that is to say—

“that the trustees or trustee for the time being of the said deed, will, or other instrument shall be respectively chargeable only for such moneys, stocks, funds, and securities as they shall respectively actually receive, notwithstanding their respectively signing any receipt for the sake of conformity, and shall be answerable and accountable only for their own acts, receipts, neglects, or defaults, and not for those of each other, nor for any banker, broker, or other person with whom any trust-moneys or securities may be deposited, nor for the insufficiency or deficiency of any stocks, funds, or securities, nor for any other loss, unless the same

* Compare Stat. 23 & 24 Vict., c. 145, s. 28.

† See foot-note (*) at p. 13, *supra*.

‡ Compare Stat. 23 & 24 Vict., c. 145, s. 29.

§ Compare *ibid*, s. 30.

20. Notice of every order of adjudication, stating the name, address, and description of the insolvent, the date of the adjudication, the Court by which the adjudication is made, and the date of presentation of the petition, shall be published in the *Gazette of India*, and in the local official Gazette, and in such other manner as may be prescribed.

Annulment of Adjudication.

21. (1) Where, in the opinion of the Court, a debtor ought not to have been adjudged insolvent, or where it is proved to the satisfaction of the Court that the debts of the insolvent are paid in full, the Court may, on the application of any person interested, by order annul the adjudication.

(2) For the purposes of this section, any debt disputed by a debtor shall be considered as paid in full if the debtor enters into a bond, in such sum and with such sureties as the Court approves, to pay the amount to be recovered in any proceeding for the recovery of or concerning the debt with costs, and any debt due to a creditor who cannot be found, or cannot be identified, shall be considered as paid in full if paid into Court.

22. Where it is proved to the satisfaction of the Court that insolvency proceedings are pending in any other British Court, whether within or without British India, against the same debtor, and that the property of the debtor can be more conveniently distributed by such other Court, the Court may annul the adjudication, or may stay all proceedings thereon.

23. (1) Where an adjudication is annulled, all sales and dispositions of property and payments duly made, and all acts theretofore done, by the Official Assignee or other person acting under his authority, or by the Court, shall be valid, but the property of the debtor who was adjudged insolvent shall vest in such person as the Court may appoint, or, in default of any such appointment, shall revert to the debtor to the extent of his right or interest therein, on such terms and subject to such conditions (if any) as the Court may declare by order.

(2) Where a debtor has been released from custody under the provisions of this Act, and the order of adjudication is annulled

shall happen through their own wilful default respectively;" and also "that it shall be lawful for the trustees or trustee for the time being of the said deed, will, or other instrument, to reimburse themselves or himself, or pay or discharge out of the trust-premises all expenses incurred in or about the execution of the trusts or powers of the said deed, will, or other instrument."

38.* It shall be lawful for any executors to pay any debts or claims upon any evidence that they may think sufficient, and to accept any composition or any security for any debts due to the deceased, and to allow any time for payment of any such debts as they shall think fit, and also to compromise, compound, or submit to arbitration all debts, accounts, claims, and things whatsoever relating to the estate of the deceased, and, for any of the purposes aforesaid, to enter into, give, and execute such agreements, instruments of composition, releases, and other things as they shall think expedient, without being responsible for any loss to be occasioned thereby.

39. [*Trustee, &c., making payment under power-of-attorney, not liable by reason of death of party giving power*] Repealed by the Powers-of-Attorney Act (VII. of 1882), s. 6.

40† Where an executor or administrator, liable as such to the rents, covenants, or agreements contained in any lease or agreement for a lease granted or assigned, whether before or after the passing of this Act, to the testator or intestate whose estate is being administered, shall have satisfied all such liabilities under the said lease or agreement for a lease as may have accrued due and been claimed up to the time of the assignment hereinafter mentioned, and shall have set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the lessee to be laid out on the property demised or agreed to be demised, although the period for laying out the same may not have arrived, and shall have assigned the lease or agreement for a lease to a purchaser thereof, he shall be at liberty to distribute the residuary estate of the deceased to and amongst the parties entitled thereto, respectively, without appropriating any part or any

* Compare Stat. 23 & 24 Vict., c. 145, s. 31.

† Compare Stat. 22 & 23 Vict., c. 35, s. 27.

proper, and may commence and take effect at and for such time as the Court may direct, and may be revoked or renewed as the Court may think fit.

(3) A protection-order shall protect the insolvent from being arrested or detained in prison for any debt to which such order shall apply, and any insolvent arrested or detained contrary to the terms of such order shall be entitled to his release :

Provided that no such order shall operate to prejudice the right of any creditor in the event of such order being revoked or the adjudication annulled.

(4) Any creditor shall be entitled to appear and oppose the grant of a protection-order, but the insolvent shall be *prima facie* entitled to such order on production of a certificate signed by the Official Assignee that he has so far conformed to the provisions of this Act.

(5) The Court may make a protection order before an insolvent has submitted his schedule if it thinks it necessary to do so in the interests of the creditors.

26. (1) At any time after the making of an order of adjudication against an insolvent, the Court, on the application of a creditor or of the Official Assignee, may direct that a meeting of creditors shall be held to consider the circumstances of the insolvency and the insolvent's schedule and his explanation thereof, and, generally, as to the mode of dealing with the property of the insolvent.

(2) With respect to the summoning of, and proceedings at, a meeting of creditors, the rules in the First Schedule shall be observed.

27. (1) Where the Court makes an order of adjudication, it shall hold a public sitting on a day to be appointed by the Court, of which notice shall be given to creditors in the prescribed manner, for the examination of the insolvent, and the insolvent shall attend thereat, and shall be examined as to his conduct, dealings, and property.

(2) The examination shall be held as soon as conveniently may be after the expiration of the time for the filing of the insolvent's schedule.

(3) Any creditor who has tendered a proof or a legal practitioner on his behalf may question the insolvent concerning his affairs and the causes of his failure.

(b) A bequeaths certain property to B, "hoping he will continue it in the family." This does not create a trust, as the beneficiary is not indicated with reasonable certainty.

(c) A bequeaths certain property to B, requesting him to distribute it amongst such members of C's family as B should think most deserving; This does not create a trust, for the beneficiaries are not indicated with reasonable certainty.

(d) A bequeaths certain property to B, desiring him to divide the bulk of it among C's children. This does not create a trust, for the trust-property is not indicated with sufficient certainty.

(e) A bequeaths a shop and stock-in-trade to B on condition that he pays A's debts and a legacy to C. This is a condition, not a trust for A's creditors and C.

Who may create trusts. 7. A trust may be created—

(a) by every person competent to contract, and,

(b) with the permission of a principal Civil Court of original jurisdiction, by or on behalf of a minor;

but subject in each case to the law for the time being in force as to the circumstances and extent in and to which the author of the trust may dispose of the trust-property.

8. The subject-matter of a trust must be property
Subject of trust. transferable to the beneficiary.

It must not be a merely beneficial interest under a subsisting trust.

Who may be beneficiary. 9. Every person capable of holding property may be a beneficiary.

A proposed beneficiary may renounce his interest under the
Disclaimer by beneficiary. trust by disclaimer addressed to the trustee, or by setting up, with notice of the trust, a claim inconsistent therewith.

10. Every person capable of holding property may be a
Who may be trustee. trustee; but where the trust involves the exercise of discretion, he cannot execute it unless he is competent to contract.

No one bound to accept trust. No one is bound to accept a trust.

A trust is accepted by any words or acts of the trustee indicating with reasonable certainty such
Acceptance of trust. acceptance.

(3) The insolvent may, at the meeting, amend the terms of his proposal if the amendment is, in the opinion of the Official Assignee, calculated to benefit the general body of creditors.

(4) Any creditor who has proved his debt may assent to, or dissent from, the proposal by a letter in the prescribed form addressed to the Official Assignee so as to be received by him not later than the day preceding the meeting, and any such assent or dissent shall have effect as if the creditor had been present, and had voted at the meeting.

29. (1) The insolvent or the Official Assignee may, after approval of proposal by the proposal is accepted by the creditors, Court. apply to the Court to approve it, and notice of the time appointed for hearing the application shall be given to each creditor who has proved.

(2) Except where an estate is being summarily administered or special leave of the Court has been obtained, the application shall not be heard until after the conclusion of the public examination of the insolvent. Any creditor who has proved may be heard by the Court in opposition to the application notwithstanding that he may, at a meeting of creditors, have voted for the acceptance of the proposal.

(3) The Court shall, before approving the proposal, hear a report of the Official Assignee as to the terms thereof, and as to the conduct of the insolvent and any objections which may be made by or on behalf of any creditor.

(4) Where the Court is of opinion that the terms of the proposal are not reasonable, or are not calculated to benefit the general body of creditors, or in any case in which the Court is required to refuse the insolvent's discharge, the Court shall refuse to approve the proposal.

(5) Where any facts are proved on proof of which the Court would be required either to refuse, suspend, or attach conditions to the debtor's discharge, the Court shall refuse to approve the proposal unless it provides reasonable security for payment of not less than four annas in the rupee on all the unsecured debts proveable against the debtor's estate.

(6) No composition or scheme shall be approved by the Court which does not provide for the payment, in priority to other debts, of all debts directed to be so paid in the distribution of the property of an insolvent.

(7) In any other case the Court may either approve or refuse to approve the proposal.

Instead of accepting a trust, the intended trustee may, within a reasonable period, disclaim it, and such disclaimer shall prevent the trust-property from vesting in him.

Disclaimer of trust.

A disclaimer by one of two or more co-trustees vests the trust-property in the other or others, and makes him or them sole trustee or trustees from the date of the creation of the trust.

Illustrations.

(a) A bequeaths certain property to B and C, his executors, as trustees for D. B and C prove A's will: This is in itself an acceptance of the trust, and B and C hold the property in trust for D.

(b) A transfers certain property to B in trust to sell it, and to pay, out of the proceeds, A's debts. B accepts the trust, and sells the property: So far as regards B, a trust of the proceeds is created for A's creditors.

(c) A bequeaths a lakh of rupees to B upon certain trusts, and appoints him his executor. B severs the lakh from the general assets, and appropriates it to the specific purpose: This is an acceptance of the trust.

CHAPTER III.

OF THE DUTIES AND LIABILITIES OF TRUSTEES

11. The trustee is bound to fulfil the purpose of the trust, and to obey the directions of the author of the trust given at the time of its creation, except as modified by the consent of all the beneficiaries being competent to contract.

Trustee to execute trust

Where the beneficiary is incompetent to contract, his consent may, for the purposes of this section, be given by a principal Civil Court of original jurisdiction.

Nothing in this section shall be deemed to require a trustee to obey any direction when to do so would be impracticable, illegal, or manifestly injurious to the beneficiaries.

Explanation.—Unless a contrary intention be expressed, the purpose of a trust for the payment of debts shall be deemed to be (a) to pay only the debts of the author of the trust existing and recoverable at the date of the instrument of trust, or, when such instrument is a will, at the date of his death, and (b), in the case of debts not bearing interest, to make such payment without interest.

shall submit to such examination, and give such information, as the meeting may require.

(2) The insolvent shall—

- (a) give such inventory of his property, such list of his creditors and debtors, and of the debts due to and from them respectively,
- (b) submit to such examination in respect of his property or his creditors,
- (c) wait at such times and places on the Official Assignee or special manager,
- (d) execute such powers-of-attorney, transfers, and instruments, and
- (e) generally do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors,

as may be required by the Official Assignee or special manager, or may be prescribed, or be directed by the Court by any special order or orders made in reference to any particular case, or made on the occasion of any special application by the Official Assignee or special manager, or any creditor or person interested.

(3) The insolvent shall aid, to the utmost of his power, in the realisation of his property and the distribution of the proceeds among his creditors.

(4) If the insolvent wilfully fails to perform the duties imposed upon him by this section, or to deliver up possession to the Official Assignee of any part of his property, which is divisible amongst his creditors under this Act, and which is for the time being in his possession or under his control, he shall, in addition to any other punishment to which he may be subject, be guilty of a contempt of Court, and may be punished accordingly.

34. (1) The Court may, either of its own motion, or at the

Arrest of insolvent.

instance of the Official Assignee or of any creditor, by warrant addressed to any police-officer or prescribed officer of the Court, cause an insolvent to be arrested, and committed to the civil prison, or, if in prison, to be detained until such time as the Court may order, under the following circumstances, namely :—

Illustrations.

(a) A, a trustee, is simply authorized to sell certain land by public auction: He cannot sell the land by private contract.

(b) A, a trustee of certain land for X, Y, and Z, is authorized to sell the land to B for a specified sum. X, Y, and Z, being competent to contract, consent that A may sell the land to C for a less sum: A may sell the land accordingly.

(c) A, a trustee for B and her children, is directed by the author of the trust to lend on B's request, trust-property to B's husband, C, on the security of his bond. C becomes insolvent, and B requests A to make the loan: A may refuse to make it.

12. A trustee is bound to acquaint himself, as soon as possible, with the nature and circumstances of state of trust-property. of the trust-property, to obtain, where necessary, a transfer of the trust-property to himself, and (subject to the provisions of the instrument of trust) to get in trust-moneys invested on insufficient or hazardous security.

Illustrations.

(a) The trust-property is a debt outstanding on personal security. The instrument of trust gives the trustee no discretionary power to leave the debt so outstanding: The trustee's duty is to recover the debt without unnecessary delay.

(b) The trust-property is money in the hands of one of two co-trustees. No discretionary power is given by the instrument of trust. The other co-trustee must not allow the former to retain the money for a longer period than the circumstances of the case required.

13 A trustee is bound to maintain and defend all such suits, and (subject to the provisions of the instrument of trust) to take such other steps as, regard being had to the nature and amount or value of the trust-property, may be reasonably requisite for the preservation of the trust-property and the assertion or protection of the title thereto.

Illustration

The trust-property is immoveable property which has been given to the author of the trust by an unregistered instrument. Subject to the provisions of the Indian Registration Act, 1877,* the trustee's duty is to cause the instrument to be registered.

14. The trustee must not, for himself or another, set up or aid any title to the trust-property adverse to the interest of the beneficiary.

* Act III. of 1877.

Court may require any such person to produce any documents in his custody or power relating to the insolvent, his dealings, or property.

(2) If any person so summoned, after having been tendered a reasonable sum, refuses to come before the Court at the time appointed, or refuses to produce any such document, having no lawful impediment made known to the Court at the time of its sitting and allowed by it, the Court may, by warrant, cause him to be apprehended and brought up for examination.

(3) The Court may examine any person so brought before it concerning the insolvent, his dealings, or property, and such person may be represented by a legal practitioner.

(4) If, on the examination of any such person, the Court is satisfied that he is indebted to the insolvent, the Court may, on the application of the Official Assignee, order him to pay to the Official Assignee, at such time and in such manner as to the Court seems expedient, the amount in which he is indebted, or any part thereof, either in full discharge of the whole amount or not, as the Court thinks fit, with or without costs of the examination.

(5) If, on the examination of any such person, the Court is satisfied that he has in his possession any property belonging to the insolvent, the Court may, on the application of the Official Assignee, order him to deliver to the Official Assignee that property, or any part thereof, at such time, in such manner, and on such terms, as to the Court may seem just.

(6) Orders made under sub-sections (4) and (5) shall be executed in the same manner as decrees for the payment of money, or for the delivery of property, under the Code of Civil Procedure, 1908,* respectively.

(7) Any person making any payment or delivery in pursuance of an order made under sub-section (4) or sub-section (5) shall, by such payment or delivery, be discharged from all liability whatsoever in respect of such debt or property.

37. The Court shall have the same powers to issue commissions and letters of request for the examination on commission or otherwise of any person liable to examination under section 36 as it has for the examination of witnesses under the Code of Civil Procedure, 1908 *

* Act V. of 1908.

15. A trustee is bound to deal with the trust-property as carefully as a man of ordinary prudence would deal with such property if it were his own; and, in the absence of a contract to the contrary, a trustee so dealing is not responsible for the loss, destruction, or deterioration of the trust-property.

Illustrations.

(a) A, living in Calcutta, is a trustee for B, living in Bombay. A remits trust-funds to B by bills drawn by a person of undoubted credit in favour of the trustee as such, and payable at Bombay. The bills are dishonoured: A is not bound to make good the loss.

(b) A, a trustee of leasehold property, directs the tenant to pay the rents on account of the trust to a banker, B, then in credit. The rents are accordingly paid to B, and A leaves the money with B only till wanted. Before the money is drawn out, B becomes insolvent. A, having had no reason to believe that B was in insolvent circumstances, is not bound to make good the loss.

(c) A, a trustee of two debts for B, releases one, and compounds the other, in good faith, and reasonably believing that it is for B's interest to do so. A is not bound to make good any loss caused thereby to B.

(d.) A, a trustee, directed to sell the trust-property by auction, sells the same, but does not advertise the sale, and otherwise fails in reasonable diligence in inviting competition: A is bound to make good the loss caused thereby to the beneficiary.

(e.) A, a trustee for B, in execution of his trust, sells the trust-property, but, from want of due diligence on his part, fails to receive part of the purchase-money: A is bound to make good the loss thereby caused to B.

(f.) A, a trustee for B of a policy of insurance, has funds in hand for payment of the premiums. A neglects to pay the premiums, and the policy is consequently forfeited. A is bound to make good the loss to B.

(g.) A bequeaths certain moneys to B and C as trustees, and authorizes them to continue trust-moneys upon the personal security of a certain firm in which A had himself invested them. A dies, and a change takes place in the firm. B and C must not permit the moneys to remain upon the personal security of the new firm.

(h) A, a trustee for B, allows the trust to be executed solely by his co-trustee C. C misapplies the trust-property. A is personally answerable for the loss resulting to B.

16. Where the trust is created for the benefit of several persons in succession, and the trust-property is of a wasting nature or a future or reversionary interest, the trustee is bound, unless an intention to the contrary may be inferred from the instrument of trust, to convert the property into property of a permanent and immediately profitable character.

or after-acquired property of the insolvent in such manner and subject to such conditions as the Court may direct; but, in that case, the decree shall not be executed without leave of the Court which leave may be given on proof that the insolvent has, since his discharge, acquired property or income available for payment of his debts.

(2) The facts hereinbefore referred to are—

- (a) that the insolvent's assets are not of a value equal to four annas in the rupee on the amount of his unsecured liabilities, unless he satisfies the Court that the fact, that the assets are not of such value, has arisen from circumstances for which he cannot justly be held responsible;
- (b) that the insolvent has omitted to keep such books of account as are usual and proper in the business carried on by him and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his insolvency;
- (c) that the insolvent has continued to trade after knowing himself to be insolvent;
- (d) that the insolvent has contracted any debt proveable under this Act without having, at the time of contracting it, any reasonable or probable ground of expectation (the burden of proving which shall lie on him) that he would be able to pay it;
- (e) that the insolvent has failed to account satisfactorily for any loss of assets, or for any deficiency of assets, to meet his liabilities;
- (f) that the insolvent has brought on or contributed to his insolvency by rash or hazardous speculations or by unjustifiable extravagance in living, or by gambling, or by culpable neglect of his business affairs;
- (g) that the insolvent has put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any suit properly brought against him;
- (h) that the insolvent has, within three months preceding the time of presentation of the petition, incurred unjustifiable expense by bringing a frivolous or vexatious suit;

Illustrations.

(a) A bequeaths to B all his property in trust for C during his life, and on his death for D and on D's death for E. A's property consists of three leasehold houses, and there is nothing in A's will to show that he intended the houses to be enjoyed in specie: B should sell the houses, and invest the proceeds in accordance with section 20.

(b) A bequeaths to B his three leasehold houses in Calcutta and all the furniture therein in trust for C during his life, and on his death for D, and on D's death for E. Here an intention that the houses and furniture should be enjoyed in specie appears clearly, and B should not sell them.

17. Where there are more beneficiaries than one, the trustee is bound to be impartial, and must not execute the trust for the advantage of one at the expense of another.

Where the trustee has a discretionary power, nothing in this section shall be deemed to authorize the Court to control the exercise, reasonably and in good faith, of such discretion.

Illustration.

A, a trustee for B, C, and D, is empowered to choose between several specified modes of investing the trust-property. A, in good faith, chooses one of these modes. The Court will not interfere although the result of the choice may be to vary the relative rights of B, C, and D.

18. Where the trust is created for the benefit of several persons in succession, and one of them is in possession of the trust-property, if he commits, or threatens to commit, any act which is destructive or permanently injurious thereto, the trustee is bound to take measures to prevent such act.

19. A trustee is bound (a) to keep clear and accurate accounts of the trust-property, and (b) at all reasonable times, at the request of the beneficiary, to furnish him with full and accurate information as to the amount and state of the trust-property.

20. Where the trust-property consists of money, and cannot be applied immediately or at an early date to the purposes of the trust, the trustee is bound (subject to any direction contained in the instrument of trust) to invest the money on the following securities, and on no others:—

order, or of any substituted order, in such manner, and upon such conditions, as it may think fit.

43. A discharged insolvent shall, notwithstanding his discharge, give such assistance as the Official Assignee may require in the realisation and distribution of such of his property as is vested in the Official Assignee. and, if he fails to do so, shall be guilty of a contempt of Court; and the Court may also, if it thinks fit, revoke his discharge, but without prejudice to the validity of any sale, disposition, or payment duly made or thing duly done subsequent to the discharge, but before its revocation.

Fraudulent settlements.

44. In either of the following cases, that is to say —

- (1) in the case of a settlement made before and in consideration of marriage where the settlor is not, at the time of making the settlement, able to pay all his debts without the aid of the property comprised in the settlement; or,
- (2) in the case of any covenant or contract made in consideration of marriage for the future settlement on or for the settlor's wife or children of any money or property wherein he had not, at the date of his marriage, any estate or interest (not being money or property of, or in right of, his wife);

if the settlor is adjudged insolvent or compounds or arranges with his creditors, and it appears to the Court that the settlement, covenant, or contract was made in order to defeat or delay creditors, or was unjustifiable, having regard to the state of the settlor's affairs at the time when it was made, the Court may refuse or suspend an order of discharge, or grant an order subject to conditions, or refuse to approve a composition or arrangement.

Effect of order of discharge.

45. (1) An order of discharge shall not release the insolvent from—

- (a) any debt due to the Crown;
- (b) any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party; or

(a) In promissory notes, debentures, stock, or other securities of the Government of India, or of the United Kingdom of Great Britain and Ireland ;

(b) in bonds, debentures, and annuities charged by the Imperial Parliament on the revenues of India ;

(c) in stock or debentures of, or shares in Railway or other Companies, the interest whereon shall have been guaranteed by the Secretary of State for India in Council ;

(d)* in debentures or other securities for money issued, under the authority of any Act of a Legislature established in British India by or on behalf of any municipal body, port trust, or city improvement trust in any Presidency-town or in Rangoon Town, or by or on behalf of the trustees of the port of Karachi ;

(e) on a first mortgage of immoveable property situate in British India, provided that the property is not a lease-hold for a term of years, and that the value of the property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the mortgage-money ; or

(f) on any other security expressly authorized by the instrument of trust, or by any rule which the High Court may, from time to time, prescribe in this behalf :

Provided that, where there is a person competent to contract, and entitled in possession to receive the income of the trust-property for his life, or for any greater estate, no investment on any security mentioned or referred to in clauses (d), (e), and (f) shall be made without his consent in writing.

21. Nothing in section 20 shall apply to investments made

Mortgage of land pledged before this Act comes into force, or to Government under Act shall be deemed to preclude an investment on a mortgage of immoveable XXVI. of 1871.

property already pledged as security for an advance under the Land Improvement Act, 1871,† or, in Deposit in Government case the trust-money does not exceed Savings Bank.

three thousand rupees, a deposit thereof in a Government Savings Bank.

* The present cl (d) of s. 20 has been substituted, for that originally enacted, by Act III. of 1908.

† Or, where the Land Improvement Loans Act (XIX. of 1883) is in force, under that Act.—See Act XIX. of 1883, ss. 1 and 2.

reason of its being subject to any contingency or contingencies, or for any other reason, does not bear a certain value:

Provided that, if, in his opinion, the value of the debt or liability is incapable of being fairly estimated, he shall issue a certificate to that effect, and thereupon the debt or liability shall be deemed to be a debt not proveable in insolvency.

Explanation.—For the purposes of this section “liability” includes any compensation for work or labour done, any obligation or possibility of an obligation to pay money or money’s worth on the breach of any express or implied covenant, contract, agreement, or undertaking, whether the breach does or does not occur, or is or is not likely to occur, or capable of occurring, before the discharge of the debtor, and generally it includes any express or implied engagement, agreement, or undertaking to pay, or capable of resulting in the payment of, money or money’s worth, whether the payment is, as respects amount, fixed or unliquidated; as respects time, present or future, certain or dependent on any contingency or contingencies; as to mode of valuation, capable of being ascertained by fixed rules, or as matter of opinion.

47. Where there have been mutual dealings between an insolvent and a creditor proving or claiming to prove a debt under this Act, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set-off against any sum due from the other party, and the balance of the account, and no more, shall be claimed or paid on either side respectively:

Provided that a person shall not be entitled under this section to claim the benefits of any set-off against the property of an insolvent in any case where he had, at the time of giving credit to the insolvent, notice of the presentation of any insolvency petition by or against him.

48. With respect to the mode of proving debts, the right of proof by secured and other creditors, the admission and rejection of proofs, and the other matters referred to in the Second Schedule, the rules in that schedule shall be observed.

49. (1) In the distribution of the property of the insolvent, there shall be paid, in priority to all other debts—
Priority of debts.

22. Where a trustee, directed to sell within a specified time,

Sale by trustee directed extends such time, the burden of proving, to sell within specified time. as between himself and the beneficiary, that the latter is not prejudiced by the extension, lies upon the trustee unless the extension has been authorized by a principal Civil Court of original jurisdiction.

Illustration

A bequeaths property to B, directing him, with all convenient speed and within five years, to sell it, and apply the proceeds for the benefit of C. In the exercise of reasonable discretion, B postpones the sale for six years. The sale is not thereby rendered invalid, but C, alleging that he has been injured by the postponement, institutes a suit against B to obtain compensation. In such suit the burden of proving that C has not been injured lies on B.

23. Where the trustee commits a breach of trust, he is liable

Liability for breach of to make good the loss which the trust-trust. property or the beneficiary has thereby sustained, unless the beneficiary has, by fraud, induced the trustee to commit the breach, or the beneficiary, being competent to contract, has himself, without coercion or undue influence having been brought to bear on him, concurred in the breach, or subsequently acquiesced therein, with full knowledge of the facts of the case, and of his rights as against the trustee.

A trustee committing a breach of trust is not liable to pay interest except in the following cases:—

(a) where he has actually received interest;

(b) where the breach consists in unreasonable delay in paying trust-money to the beneficiary;

(c) where the trustee ought to have received interest, but has not done so;

(d) where he may be fairly presumed to have received interest.

He is liable, in case (a), to account for the interest actually received, and in cases (b), (c), and (d), to account for simple interest at the rate of six per cent per annum unless the Court otherwise directs.

(e) Where the breach consists in failure to invest trust-money, and to accumulate the interest or dividends thereon, he is liable to account for compound interest (with half-yearly rests) at the same rate.

Property available for Payment of Debts

51. The insolvency of a debtor, whether the same takes place on the debtor's own petition or upon that of a creditor or creditors, shall be deemed to have relation back to, and to commence at,—

- (a) the time of the commission of the act of insolvency on which an order of adjudication is made against him, or,
- (b) if the insolvent is proved to have committed more acts of insolvency than one, the time of the first of the acts of insolvency proved to have been committed by the insolvent within three months next preceding the date of the presentation of the insolvency petition:

Provided that no insolvency petition or order of adjudication shall be rendered invalid by reason of any act of insolvency committed anterior to the debt of the petitioning creditor.

52. (1) The property of the insolvent divisible amongst his creditors, and in this Act referred to as the property of the insolvent, shall not comprise the following particulars, namely—

- (a) property held by the insolvent on trust for any other person;
 - (b) the tools (if any) of his trade and the necessary wearing apparel, bedding, cooking vessels, and furniture of himself, his wife, and children, to a value, inclusive of tools and apparel and other necessities as aforesaid, not exceeding three hundred rupees in the whole.
- (2) Subject as aforesaid, the property of the insolvent shall comprise the following particulars, namely—
- (a) all such property as may belong to, or be vested in, the insolvent at the commencement of the insolvency, or may be acquired by, or devolve on, him before his discharge;
 - (b) the capacity to exercise, and to take proceedings for exercising, all such powers in or over, or in respect of, property as might have been exercised by the insolvent for his own benefit at the commencement of his insolvency or before his discharge; and

(f) Where the breach consists in the employment of trust-property or the proceeds thereof in trade or business, he is liable to account, at the option of the beneficiary, either for compound interest (with half-yearly rests) at the same rate, or for the nett profits made by such employment.

Illustrations.

(a.) A, a trustee, improperly leaves trust-property outstanding, and it is consequently lost. He is liable to make good the property lost, but he is not liable to pay interest thereon.

(b.) A bequeaths a house to B in trust to sell it, and pay the proceeds to C. B neglects to sell the house for a great length of time, whereby the house is deteriorated, and its market price falls: B is answerable to C for the loss.

(c.) A trustee is guilty of unreasonable delay in investing trust-money in accordance with section 20, or in paying it to the beneficiary. The trustee is liable to pay interest thereon for the period of the delay.

(d.) The duty of the trustee is to invest trust-money in any of the securities mentioned in section 20, clause a, b, c, or d. Instead of so doing, he retains the money in his hands: He is liable, at the option of the beneficiary, to be charged either with the amount of the principal money and interest, or with the amount of such securities, as he might have purchased with the trust-money when the investment should have been made, and the intermediate dividends and interest thereon.

(e.) The instrument of trust directs the trustee to invest trust-money either in any of such securities, or on mortgage of immoveable property. The trustee does neither: He is liable for the principal money and interest.

(f.) The instrument of trust directs the trustee to invest trust-money in any of such securities, and to accumulate the dividends thereon. The trustee disregards the direction: He is liable, at the option of the beneficiary, to be charged either with the amount of the principal money and compound interest, or with the amount of such securities as he might have purchased with the trust-money when the investment should have been made, together with the amount of the accumulation which would have arisen from a proper investment of the intermediate dividends.

(g.) The property is invested in one of the securities mentioned in section 20, clause a, b, or d. The trustee sells such security for some purpose not authorized by the terms of the instrument of trust: He is liable, at the option of the beneficiary, either to replace the security with the intermediate dividends and interest thereon or to account for the proceeds of the sale with interest thereon.

(h.) The trust-property consists of land. The trustee sells the land to a purchaser for a consideration without notice of the trust. The trustee is liable, at the option of the beneficiary, to purchase other land of equal value to be settled upon the like trust, or to be charged with the proceeds of the sale with interest.

transferor is adjudged insolvent within two years after the date of the transfer, be void against the Official Assignee.

56. (1) Every transfer of property, every payment made, Avoidance of preference in every obligation incurred; and every certain cases. judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor, with a view of giving that creditor a preference over the other creditors, shall, if such person is adjudged insolvent on a petition presented within three months after the date thereof, be deemed fraudulent and void as against the Official Assignee.

(2) This section shall not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the insolvent.

57. Subject to the foregoing provisions with respect to the Protection of *bond-fide* effect of insolvency on an execution, and transactions. with respect to the avoidance of certain transfers and preferences, nothing in this Act shall invalidate, in the case of an insolvency—

- (a) any payment by the insolvent to any of his creditors;
- (b) any payment or delivery to the insolvent;
- (c) any transfer by the insolvent for valuable consideration ;
or
- (d) any contract or dealing by or with the insolvent for valuable consideration :

Provided that any such transaction takes place before the date of the order of adjudication, and that the person with whom such transaction takes place has not at the time notice of the presentation of any insolvency petition by or against the debtor.

Realisation of Property.

58. (1) The Official Assignee shall, as soon as may be, take Possession of property by possession of the deeds, books, and documents of the insolvent, and all other parts Official Assignee. of his property capable of manual delivery.

(2) The Official Assignee shall, in relation to, and for the purpose of acquiring or retaining possession of, the property of the insolvent, be in the same position as if he were a receiver of the

24 A trustee, who is liable for a loss occasioned by a breach of trust in respect of one portion of the trust-property, cannot set off against his liability a gain which has accrued to another portion of the trust-property through another and distinct breach of trust.

25 Where a trustee succeeds another, he is not, as such, liable for the acts or defaults of his predecessors.

26. Subject to the provisions of sections 13 and 15, one trustee is not, as such, liable for a breach of trust committed by his co-trustee:

Provided that, in the absence of an express declaration to the contrary in the instrument of trust, a trustee is so liable—

(a) where he has delivered trust-property to his co-trustee without seeing to its proper application :

(b) where he allows his co-trustee to receive trust-property, and fails to make due enquiry as to the co-trustee's dealings therewith, or allows him to retain it longer than the circumstances of the case reasonably require .

(c) where he becomes aware of a breach of trust committed or intended by his co-trustee, and either actively conceals it, or does not, within a reasonable time, take proper steps to protect the beneficiary's interest.

A co-trustee, who joins in signing a receipt for trust-property, and proves that he has not received the same, is not answerable, by reason of such signature only, for loss or misapplication of the property by his co-trustee.

Illustration

A bequeaths certain property to B and C, and directs them to sell it, and invest the proceeds for the benefit of D. B and C accordingly sell the property, and the purchase-money is received by B, and retained in his hands. C pays no attention to the matter for two years, and then calls on B to make the investment. B is unable to do so, becomes insolvent, and the purchase money is lost. C may be compelled to make good the amount.

27. Where co-trustees jointly commit a breach of trust, or where one of them, by his neglect, enables the other to commit a breach of trust.

(2) Where an insolvent is in the receipt of a salary or income other than as aforesaid, the Court may, at any time after adjudication, and from time to time, make such order as it thinks just for the payment to the Official Assignee, for distribution among the creditors, of so much of such salary or income as may be liable to attachment in execution of a decree, or of any portion thereof.

61. The property of the insolvent shall pass from Official Vesting and transfer of Assignee to Official Assignee, and shall vest in the Official Assignee for the time being during his continuance in office, without any transfer whatever.

62. (1) Where any part of the property of an insolvent consists of land of any tenure burdened with onerous covenants, of shares or stocks in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the Official Assignee may, notwithstanding that he may have endeavoured to sell or have taken possession of the property, or exercised any act of ownership in relation thereto, but subject always to the provisions hereinafter contained in that behalf, by writing signed by him, at any time within twelve months after the insolvent has been adjudged insolvent, disclaim the property:

Provided that, where any such property has not come to the knowledge of the Official Assignee within one month after such adjudication as aforesaid, he may disclaim the property at any time within twelve months after he has first become aware thereof.

(2) The disclaimer shall operate to determine, as from the date thereof, the rights, interests, and liabilities of the insolvent and his property in or in respect of the property disclaimed, and shall also discharge the Official Assignee from all personal liability in respect of the property disclaimed as from the date when the property vested in him, but shall not, except so far as is necessary for the purpose of releasing the insolvent and his property, and the Official Assignee from liability, affect the rights or liabilities of any other person.

63. Subject always to such rules as may be made in this behalf, the Official Assignee shall not be entitled to disclaim any leasehold interest

Disclaimer of leaseholds.

trust, each is liable to the beneficiary for the whole of the loss occasioned by such breach.

But, as between the trustees themselves, if one be less guilty

Contribution as between than another, and has had to refund the co-trustees. loss, the former may compel the latter or his legal representative, to the extent of the assets he had received, to make good such loss; and, if all be equally guilty, any one or more of the trustees who has had to refund the loss may compel the others to contribute

Nothing in this section shall be deemed to authorize a trustee who has been guilty of fraud to institute a suit to compel contribution.

28. When any beneficiary's interest becomes vested in

Non-liability of trustee another person, and the trustee, not paying without notice of having notice of the vesting, pays or transfer by beneficiary. delivers trust-property to the person who would have been entitled thereto in the absence of such vesting, the trustee is not liable for the property so paid or delivered.

29. When the beneficiary's interest is forfeited or awarded

Liability of trustee where by legal adjudication to Government, beneficiary's interest is forfeited to Government. the trustee is bound to hold the trust-property to the extent of such interest for the benefit of such person in such manner as the Government may direct in this behalf.

30. Subject to the provisions of the instrument of trust, and

Indemnity of trustees. or sections 23 and 26, trustees shall be respectively chargeable only for such moneys, stocks, funds, and securities as they respectively actually receive, and shall not be answerable the one for the other of them, nor for any banker, broker, or other person in whose hands any trust-property may be placed, nor for the insufficiency or deficiency of any stocks, funds, or securities, nor otherwise for involuntary losses

CHAPTER IV.

OF THE RIGHTS AND POWERS OF TRUSTEES

31. A trustee is entitled to have in his possession the instrument of trust and all the documents

Right to title-deed.

of title (if any) relating solely to the trust-property.

favour of any person claiming under the insolvent, whether as under-lessee or as mortgagee, except upon the terms of making such person subject to the same liabilities and obligations as the insolvent was subject to under the lease in respect of the property at the date when the insolvency petition was filed, and any under-lessee or mortgagee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and if there is no person claiming under the insolvent who is willing to accept an order upon such terms, the Court shall have power to vest the insolvent's interest in the property in any person liable, either personally or in a representative character, and either alone or jointly with the insolvent, to perform the lessee's covenants in such lease, freed and discharged from all estates, incumbrances, and interests created therein by the insolvent.

(2) The Court may, if it thinks fit, modify the terms prescribed by the foregoing proviso so as to make a person in whose behalf the vesting order may be made subject only to the same liabilities and obligations as if the lease had been assigned to him at the date when the insolvency petition was filed, and (if the case so requires) as if the lease had comprised only the property comprised in the vesting order.

67. Any person injured by the operation of a disclaimer
Persons injured by dis- under the foregoing provisions shall be
claimer may prove. deemed to be a creditor of the insolvent
to the amount of the injury, and may accordingly prove the same as
a debt under the insolvency.

68. (1) Subject to the provisions of this Act, the Official
Duty and powers of Offi- Assignee shall, with all convenient speed,
cial Assignee as to realisation. realize the property of the insolvent, and
for that purpose may—

(a) sell all or any part of the property of the insolvent ;

(b) give receipts for any money received by him ;

and may, by leave of the Court, do all or any of the following things, namely—

(c) carry on the business of the insolvent so far as may be necessary for the beneficial winding-up of the same ;

(d) institute, defend, or continue any suit or other legal proceeding relating to the property of the insolvent ;

(a) a transferee in good faith for consideration without having notice of the trust, either when the purchase-money was paid, or when the conveyance was executed, or—

(b) a transferee for consideration from such a transferee.

A judgment-creditor of the trustee attaching and purchasing trust-property is not a transferee for consideration within the meaning of this section.

Nothing in section 63 applies to money, currency-notes, and negotiable instruments in the hands of a *bona-fide* holder to whom they have passed in circulation, or shall be deemed to affect the Indian Contract Act, 1872,* section 108, or the liability of a person to whom a debt or charge is transferred.

65. Where a trustee wrongfully sells or otherwise transfers

Acquisition by trustee of trust-property wrongfully converted.

trust-property, and afterwards himself becomes the owner of the property, the property again becomes subject to the trust, notwithstanding any want of notice on the part of intervening transferees in good faith for consideration.

66. Where the trustee wrongfully mingles the trust-property

Right in case of blended property.

with his own, the beneficiary is entitled to a charge on the whole fund for the amount due to him.

67. If a partner, being a trustee, wrongfully employs trust-

Wrongful employment by partner-trustee of trust-property for partnership purposes.

property in the business or on the account of the partnership, no other partner is liable therefor in his personal capacity to the beneficiaries unless he had notice of the breach of trust.

The partners having such notice are jointly and severally liable for the breach of trust.

Illustrations.

(a) A and B are partners. A dies, having bequeathed all his property to B in trust for Z, and appointed B his sole executor. B, instead of winding up the affairs of the partnership, retains all the assets in the business. Z may compel him, as partner, to account for so much of the profits as are derived from A's share of the capital. B is also answerable to Z for the improper employment of A's assets

(b) A, a trader, bequeaths his property to B in trust for C, appoints B his sole executor, and dies. B enters into partnership with X and Y in the same trade, and employs A's assets in the partnership-business. B

* Act IX of 1872.

(5) When the Official Assignee has declared a dividend, he shall send to each creditor who has proved a notice showing the amount of the dividend, and when and how it is payable, and, if required by any creditor, a statement in the prescribed form as to the particulars of the estate.

70. Where one partner in a firm is adjudged insolvent, a joint and separate pro-creeitor, to whom the insolvent is indebted jointly with the other partners in the firm or any of them, shall not receive any dividend out of the separate property of the insolvent until all the separate creditors have received the full amount of their respective debts.

71. (1) In the calculation and distribution of dividends, the Official Assignee shall retain in his hands sufficient assets to meet —
Calculation of dividends.

(a) debts proveable in insolvency and appearing from the insolvent's statements or otherwise to be due to persons resident in places so distant that, in the ordinary course of communication, they have not had sufficient time to tender their proofs;

(b) debts proveable in insolvency, the subject of claims not yet determined;

(c) disputed proofs or claims; and

(d) the expenses necessary for the administration of the estate or otherwise.

(2) Subject to the provisions of sub-section (1), all money in hand shall be distributed as dividends.

72. Any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid, out of any money for the time being in the hands of the Official Assignee, any dividend or dividends which he may have failed to receive, before that money is applied to the payment of any future dividend or dividends, but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein.

73. (1) When the Official Assignee has realized all the property of the insolvent, or so much thereof as can, in his opinion, be realized without needlessly protracting the proceedings in insol-
Final dividend.

gives an indemnity to X and Y against the claims of C : Here X and Y are jointly liable with B to C as having knowingly become parties to the breach of trust committed by B.

Liability of beneficiary joining in breach of trust. **68.** Where one of several beneficiaries—

(a) joins in committing breach of trust, or

(b) knowingly obtains any advantage therefrom, without the consent of the other beneficiaries, or

(c) becomes aware of a breach of trust committed or intended to be committed, and either actually conceals it, or does not, within a reasonable time, take proper steps to protect the interests of the other beneficiaries, or

(d) has deceived the trustee, and thereby induced him to commit a breach of trust,

the other beneficiaries are entitled to have all his beneficial interest impounded as against him, and all who claim under him (otherwise than as transferees for consideration without notice of the breach), until the loss caused by the breach has been compensated.

When property has been transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in this section applies to such property during her marriage.

69. Every person to whom a beneficiary transfers his interest has the rights, and is subject to the liabilities, of the beneficiary in respect of such interest at the date of the transfer.

Rights and liabilities of beneficiary's transferee.

CHAPTER VII.

OF VACATING THE OFFICE OF TRUSTEE.

70. The office of a trustee is vacated by his death or by his discharge from his office.

Office how vacated.

71. A trustee may be discharged from his office only as follows :—

Discharge of trustee.

(a) by the extinction of the trust ;

(b) by the completion of his duties under the trust ;

PRESIDENCY-TOWNS INSOLVENCY.

PART IV.

OFFICIAL ASSIGNEES.

77. (1) The Chief Justice of each of the High Courts of Judicature at Fort William, Madras, and Bombay, and the Chief Judge of the Chief Court of Lower Burma, may, from time to time, appoint, substantively or temporarily, such person as he thinks fit to the office of Official Assignee of insolvent's estates for each of the said Courts respectively; and may, with the concurrence of a majority of the other Judges of the Court, remove the person for the time being holding that office for any cause appearing to the Court sufficient.

(2) Every Official Assignee shall give such security, and shall be subject to such rules, and shall act in such manner, as may be prescribed.

(3) Notwithstanding anything in sub-section (1), the persons, substantively or temporarily holding the office of Official Assignee immediately before the commencement of this Act in the Courts for the Relief of Insolvent Debtors at Calcutta, Madras, and Bombay, respectively, under the Indian Insolvency Act, 1843,* and in the Chief Court of Lower Burma under that Act as applied by the Lower Burma Courts Act, 1900,† shall, without further appointment for that purpose, become the Official Assignees, substantive or temporary, as the case may be, under this Act in the High Courts at Fort William, Madras and Bombay, and in the Chief Court of Lower Burma, respectively.

78. An Official Assignee may, for the purpose of affidavits, verifying proofs, petitions, or other proceedings under this Act, administer oaths.

79. (1) The duties of an Official Assignee shall have relation to the conduct of the insolvent as well as to the administration of his estate.

(2) In particular it shall be the duty of the Official Assignee—

(a) to investigate the conduct of the insolvent, and to report to the Court upon any application for discharge, stating whether there is reason to believe that the insolvent has committed any act which constitutes,

* Stat. 11 & 12 Vict., c. 21.

† Act VI. of 1900.

(c) by such means as may be prescribed by the instrument of trust;

(d) by appointment under this Act of a new trustee in his place;

(e) by consent of himself and the beneficiary, or, where there are more beneficiaries than one, all the beneficiaries being competent to contract, or

(f) by the Court to which a petition for his discharge is presented under this Act.

72. Notwithstanding the provisions of section 11, every trustee may apply by petition to a principal Civil Court of original jurisdiction to be discharged from his office; and, if the Court finds that there is sufficient reason for such discharge, it may discharge him accordingly, and direct his costs to be paid out of the trust-property. But, where there is no such reason, the Court shall not discharge him, unless a proper person can be found to take his place.

73. Whenever any person appointed a trustee disclaims, or any trustee, either original or substituted, dies, or is, for a continuous period of six months, absent from British India, or leaves British India for the purpose of residing abroad, or is declared an insolvent, or desires to be discharged from the trust, or refuses or becomes, in the opinion of a principal Civil Court of original jurisdiction, unfit or personally incapable to act in the trust, or accepts an inconsistent trust, a new trustee may be appointed in his place by—

(a) the person nominated for that purpose by the instrument of trust (if any), or

(b) if there be no such person, or no such person able and willing to act, the author of the trust, if he be alive and competent to contract, or the surviving or continuing trustees or trustee for the time being, or legal representative of the last surviving and continuing trustee, or (with the consent of the Court) the retiring trustees, if they all retire simultaneously, or (with the like consent) the last retiring trustee.

Every such appointment shall be by writing under the hand of the person making it.

On an appointment of a new trustee, the number of trustees may be increased.

85. (1) Subject to the provisions of this Act, and to the Discretionary powers and directions of the Court, the Official Assignee shall, in the administration of the property of the insolvent, and in the distribution thereof amongst his creditors, have regard to any resolution that may be passed by the creditors at a meeting.

(2) The Official Assignee may, from time to time, summon meetings of the creditors for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors, by resolution at any meeting, or the Court may direct, or whenever requested in writing to do so by one-fourth in value of the creditors who have proved.

(3) The Official Assignee may apply to the Court for directions in relation to any particular matter arising under the insolvency.

(4) Subject to the provisions of this Act, the Official Assignee shall use his own discretion in the management of the estate and its distribution among the creditors.

86. If the insolvent or any of the creditors or any other person is aggrieved by any act or decision of the Official Assignee, he may appeal to the Court, and the Court may confirm, reverse, or modify the act or decision complained of, and make such order as it thinks just.

87. (1) If any Official Assignee does not faithfully perform his duties, and duly observe all the requirements imposed on him by any enactment, rules, or otherwise, with respect to the performance of his duties, or if any complaint is made to the Court by any creditor in regard thereto, the Court shall enquire into the matter, and take such action thereon as may be deemed expedient.

(2) The Court may at any time require any Official Assignee to answer any enquiry made by it in relation to any insolvency in which he is engaged, and may examine him or any other person on oath concerning the insolvency.

(3) The Court may also direct an investigation to be made of the books and vouchers of the Official Assignee.

The Official Trustee may, with his consent, and by the order of the Court, be appointed under this section, in any case in which only one trustee is to be appointed, and such trustee is to be the sole trustee.

The provisions of this section relative to a trustee who is dead include the case of a person nominated trustee in a will, but dying before the testator, and those relative to a continuing trustee include a refusing or retiring trustee if willing to act in the execution of the power.

74. Whenever any such vacancy or disqualification occurs, and it is found impracticable to appoint a new trustee under section 73, the beneficiary may, without instituting a suit, apply by petition to a principal Civil Court of original jurisdiction for the appointment of a trustee or a new trustee, and the Court may appoint a trustee or a new trustee accordingly.

In appointing new trustees, the Court shall have regard (a) to the wishes of the author of the trust as expressed in, or to be inferred from, the instrument of trust; (b) to the wishes of the person (if any) empowered to appoint new trustees; (c) to the question whether the appointment will promote or impede the execution of the trust; and (d), where there are more beneficiaries than one, to the interests of all such beneficiaries.

75. Whenever any new trustee is appointed under section 73 or section 74, all the trust-property for the time being vested in the surviving or continuing trustees or trustee, or in the legal representative of any trustee, shall become vested in such new trustee, either solely, or jointly with the surviving or continuing trustees or trustee, as the case may require.

Every new trustee so appointed, and every trustee appointed by a Court, either before or after the passing of this Act, shall have the same powers, authorities, and discretions, and shall, in all respects, act as if he had been originally nominated a trustee by the author of the trust.

76. On the death or discharge of one of several co-trustees, the trust survives, and the trust-property passes to the others, unless the instrument of trust expressly declares otherwise.

(6) Subject to rules, the Court may in any matter take the whole or any part of the evidence either *viva voce*, or by interrogatories, or upon affidavit, or by commission.

(7) For the purpose of approving a composition or scheme by joint debtors, the Court may, if it thinks fit, and on the report of the Official Assignee that it is expedient so to do, dispense with the public examination of one of the joint debtors if he is unavoidably prevented from attending the examination by illness or absence abroad.

(8) For the purposes of this Act, the Chief Court of Lower Burma shall have all the powers to punish for contempt of Court which are possessed by the High Courts of Judicature at Fort William, Madras, and Bombay respectively.

91. Where two or more insolvency petitions are presented against the same debtor or against joint debtors, or where joint debtors file separate petitions, the Court may consolidate the proceedings or any of them on such terms as the Court thinks fit.

92. Where the petitioner does not proceed with due diligence on his petition, the Court may substitute as petitioner any other creditor to whom the debtor is indebted in the amount required by this Act in the case of a petitioning creditor.

93. If a debtor by or against whom an insolvency petition has been presented dies, the proceedings in the matter shall, unless the Court otherwise orders, be continued as if he were alive.

94. The Court may, at any time, for sufficient reason, make an order staying the proceedings under an insolvency petition, either altogether or for a limited time, on such terms, and subject to such conditions, as the Court thinks just.

95. Any creditor whose debt is sufficient to entitle him to present an insolvency petition against all the partners in a firm may present a petition against any one or more partners in the firm without including the others.

CHAPTER VIII.

OF THE EXTINCTION OF TRUSTS.

Trust how extinguished.

77. A trust is extinguished—

- (a) when its purpose is completely fulfilled ; or
- (b) when its purpose becomes unlawful ; or
- (c) when the fulfilment of its purpose becomes impossible by destruction of the trust-property or otherwise ; or
- (d) when the trust, being revocable, is expressly revoked.

Revocation of trust.

78 A trust created by will may be revoked at the pleasure of the testator.

A trust otherwise created can be revoked only,—

- (a) where all the beneficiaries are competent to contract—by their consent ;
- (b) where the trust has been declared by a non-testamentary instrument or by word of mouth—in exercise of a power of revocation expressly reserved to the author of the trust ; or,
- (c) where the trust is for the payment of the debts of the author of the trust, and has not been communicated to the creditors—at the pleasure of the author of the trust.

Illustration.

A conveys property to B in trust to sell the same, and pay out of the proceeds the claims of A's creditors. A reserves no power of revocation. If no communication has been made to the creditors, A may revoke the trust : but, if the creditors are parties to the arrangement, the trust cannot be revoked without their consent.

79. No trust can be revoked by the author of the trust so

Revocation not to defeat what trustees have duly done. as to defeat or prejudice what the trustees may have duly done in execution of the trust.

CHAPTER IX.

OF CERTAIN OBLIGATIONS IN THE NATURE OF TRUSTS.

Where obligation in nature of trust is created.

80. An obligation in the nature of a trust is created in the following cases :—

100. (1) A warrant of arrest issued by the Court may be
 Warrants of Insolvency executed in the same manner, and sub-
 Courts. ject to the same conditions, as a warrant
 of arrest issued under the Code of Criminal Procedure, 1898,*
 may be executed.

(2) A warrant to seize any part of the property of an insolvent,
 issued by the Court under section 59, sub-section (1), shall be in
 the form prescribed, and sections 77 (2), 79, 82, 83, 84, and 102 of
 the said Code* shall, so far as may be, apply to the execution of
 such warrant.

(3) A search-warrant issued by the Court under section 59,
 sub-section (2), may be executed in the same manner, and subject
 to the same conditions, as a search-warrant for property supposed
 to be stolen may be executed under the said Code.*

PART VII.

LIMITATION.

101. The period of limitation for an appeal from any act or
 decision of the Official Assignee, or
 Limitation of appeals. from an order made by an officer of the
 Court empowered under section 6, shall be twenty days from the
 date of such act, decision, or order, as the case may be.

PART VIII.

PENALTIES.

102. An undischarged insolvent obtaining credit to the
 Undischarged insolvent ob- extent of fifty rupees or upwards from
 taining credit. any person without informing such
 person that he is an undischarged insolvent shall, on conviction by
 a Magistrate, be punishable with imprisonment for a term which
 may extend to six months, or with fine, or with both.

Punishment of insolvents
 for certain offences.

103. Any person adjudged insol-
 vent who—

(a) fraudulently, with the intent to conceal the state of his
 affairs, or to defeat the objects of this Act,—

* Act V. of 1898.

81. Where the owner of property transfers or bequeaths it,

Where it does not appear and it cannot be inferred, consistently that transferor intended to with the attendant circumstances that dispose of beneficial interest. he intended to dispose of the beneficial interest therein, the transferee or legatee must hold such property for the benefit of the owner or his legal representative.

Illustrations.

(a) A conveys land to B without consideration, and declares no trust of any part. It cannot, consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in the land. B holds the land for the benefit of A.

(b) A conveys to B two fields, Y and Z, and declares a trust of Y, but says nothing about Z. It cannot, consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in Z. B holds Z for the benefit of A.

(c.) A transfers certain stock belonging to him into the joint names of himself and B. It cannot, consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in the stock during his life: A and B hold the stock for the benefit of A during his life.

(d) A makes a gift of certain land to his wife B. She takes the beneficial interest in the land free from any trust in favour of A, for it may be inferred from the circumstances that the gift was for B's benefit.

82. Where property is transferred to one person for a con-

Transfer to one for con- sideration paid or provided by another sideration paid by another. person, and it appears that such other person did not intend to pay or provide such consideration for the benefit of the transferee, the transferee must hold the property for the benefit of the person paying or providing the consideration.

Nothing in this section shall be deemed to affect the Code of Civil Procedure, section 317,* or Act No. XI. of 1859 (*to improve the law relating to sales of land for arrears of revenue in the Lower Provinces under the Bengal Presidency*), section 36.

83. Where a trust is incapable of being executed, or where

Trust incapable of execu- the trust is completely executed without tion, or executed without exhausting the trust-property, the trustee, exhausting trust-property. in the absence of a direction to the contrary, must hold the trust-property, or so much thereof as is unexhausted, for the benefit of the author of the trust or his legal representative.

* See Act XIV. of 1882, s. 3.

105. Where an insolvent has been guilty of any of the offences specified in section 102 or section 103, Criminal liability after discharge or composition. he shall not be exempt from being proceeded against therefor by reason that he has obtained his discharge, or that a composition or scheme of arrangement has been accepted or approved.

PART IX.

SMALL INSOLVENCIES.

106. Where the Court is satisfied by affidavit or otherwise, or Summary administration in small cases. the Official Assignee reports to the Court, that the property of an insolvent is not likely to exceed in value three thousand rupees or such other less amount as may be prescribed, the Court may make an order that the insolvent's estate be administered in a summary manner, and thereupon the provisions of this Act shall be subject to the following modifications, namely—

- (a) no appeal shall lie from any order of the Court except by leave of the Court;
- (b) no examination of the insolvent shall be held except on the application of a creditor or the Official Assignee;
- (c) the estate shall, where practicable, be distributed in a single dividend;
- (d) such other modifications as may be prescribed with the view of saving expense and simplifying procedure:

Provided that nothing in this section shall permit the modification of the provisions of this Act relating to the discharge of the insolvent.

(a) The Court may at any time, if it thinks fit, revoke an order for the summary administration of an insolvent's estate.

PART X.

SPECIAL PROVISIONS.

107. No insolvency petition shall be presented against any corporation or against any association etc., from insolvency proceedings. Exemption of corporation, etc., from insolvency proceedings. or company registered under any enactment for the time being in force.

Illustrations.

(a) A conveys certain land to B—

"upon trust," and no trust is declared ; or

"upon trust to be thereafter declared," and no such declaration is ever made ; or

upon trusts that are too vague to be executed , or

upon trusts that become incapable of taking effect ; or

"in trust for C," and C renounces his interest under the trust :

In each of these cases B holds the land for the benefit of A

(b) A transfers Rs 10,000 in the four per cents to B in trust to pay the interest annually accruing due to C for her life A dies Then C dies B holds the fund for the benefit of A's legal representative

(c) A conveys land to B upon trust to sell it, and apply one moiety of the proceeds for certain charitable purposes, and the other for the maintenance of the worship of an idol B sells the land, but the charitable purposes wholly fail, and the maintenance of the worship does not exhaust the second moiety of the proceeds: B holds the first moiety and the part unapplied of the second moiety for the benefit of A or his legal representative.

(d) A bequeaths Rs 10,000 to B, to be laid out in buying land to be conveyed for purposes which, either wholly or partially, fail to take effect: B holds for the benefit of A's legal representative the undisposed-of interest in the money, or land if purchased

84. Where the owner of property transfers it to another for Transfer for illegal purpose. an illegal purpose, and such purpose is not carried into execution, or the transferor is not as guilty as the transferee, or the effect of permitting the transferee to retain the property might be to defeat the provisions of any law, the transferee must hold the property for the benefit of the transferor.

85. Where a testator bequeaths certain property upon trust, and the purpose of the trust appears on the face of the will to be unlawful, or, Request for illegal purpose. during the testator's lifetime, the legatee agrees with him to apply the property for an unlawful purpose, the legatee must hold the property for the benefit of the testator's legal representative.

Where property is bequeathed, and the revocation of the bequest is prevented by coercion, the Request of which revocation is prevented by coercion. legatee must hold the property for the benefit of the testator's legal representative.

incurred by him in and about the debtor's estate; and those claims shall be deemed a preferential debt under the order, and be payable in full, out of the debtor's estate, in priority to all other debts.

(4) If, on the administration of a deceased debtor's estate, any surplus remains in the hands of the Official Assignee after payment in full of all the debts due from the debtor, together with the costs of the administration and interest as provided by this Act in case of insolvency, such surplus shall be paid over to the legal representative of the deceased debtor's estate, or dealt with in such other manner as may be prescribed.

110. (1) After notice of the presentation of a petition under Payments or transfer by section 108, no payment or transfer of legal representatives. property made by the legal representative shall operate as a discharge to him as between himself and the Official Assignee.

(2) Save as aforesaid nothing in section 108 or section 109 or this section shall invalidate any payment made or act or thing done in good faith by the legal representative, or by a District Judge acting under the powers conferred on him by section 64 of the Administrator-Generals Act, 1874,* before the date of the order for administration.

111. The provisions of sections 108, 109, and 110 shall not Saving of jurisdiction of Administrator-General. apply to any case in which probate or letters of administration to the estate of a deceased debtor have been granted to an Administrator-General.

PART XI.

RULES.

112. (1) The Courts having jurisdiction under this Act may Rules. from time to time make rules for carrying into effect the objects of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for and regulate—

(a) the fees and percentages to be charged under this Act and the manner in which the same are to be collected and accounted for, and the account to which they are to be paid;

* Act II. of 1874.

86. Where property is transferred in pursuance of a contract which is liable to rescission, or Transfer pursuant to rescindable contract. induced by fraud or mistake, the transferee must, on receiving notice to that effect, hold the property for the benefit of the transferor, subject to re-payment by the latter of the consideration actually paid.

87. Where a debtor becomes the executor or other legal representative of his creditor, he must hold the debt for the benefit of the persons interested therein.
Debtor becoming creditor's representative.

88. Where a trustee, executor, partner, agent, director of a company, legal adviser, or other person bound in a fiduciary character to protect the interests of another person by availing himself of his character, gains for himself any pecuniary advantage, or where any person so bound enters into any dealings under circumstances in which his own interests are or may be adverse to those of such other person, and thereby gains for himself a pecuniary advantage, he must hold for the benefit of such other person the advantage so gained.
Advantage gained by fiduciary.

Illustrations.

(a) A, an executor, buys at an undervalue from B, a legatee, his claim under the will. B is ignorant of the value of the bequest: A must hold for the benefit of B the difference between the price and value.

(b) A, a trustee, uses the trust-property for the purpose of his own business. A holds for the benefit of his beneficiary the profits arising from such user.

(c) A, a trustee, retires from his trust in consideration of his successor paying him a sum of money: A holds such money for the benefit of his beneficiary.

(d.) A, a partner, buys land in his own name with funds belonging to the partnership: A holds such land for the benefit of the partnership.

(e.) A, a partner employed on behalf of himself and his co partners in negotiating the terms of a lease, clandestinely stipulates with the lessor for payment to himself of a lakh of rupees: A holds the lakh for the benefit of the partnership.

(f.) A and B are partners. A dies. B, instead of winding up the affairs of the partnership, retains all the assets in the business: B must account to A's legal representative for the profits arising from A's share of the capital.

(g.) A, an agent employed to obtain a lease for B, obtains the lease for himself: A holds the lease for the benefit of B.

(g) the procedure to be followed in the case of estates to be administered in a summary manner ;

(r) the procedure to be followed in the case of estates of deceased persons to be administered under this Act.

113. Rules made under the provisions of this Part shall be subject, in the case of the High Court of Judicature at Fort William in Bengal, to the previous sanction of the Governor-General in Council, and, in the case of any other Court, of the Local Government.

114. Rules so made and sanctioned shall be published in the *Gazette of India*, or in the local official Gazette, as the case may be, and shall thereupon have the same force and effect with regard to proceedings under this Act in the Court which made them as if they had been enacted in this Act.

PART XII.

SUPPLEMENTAL.

115. (1) Every transfer, mortgage, assignment, power-of-Exemption from duty of attorney, proxy-paper, certificate, affidavit-transfers, etc., under this Act, vii, bond, or other proceedings, instrument, or writing whatsoever before, or under any order of, the Court, and any copy thereof, shall be exempt from payment of any stamp or other duty whatsoever.

(2) No stamp-duty or fee shall be chargeable for any application made by the Official Assignee to the Court under this Act, or for the drawing and issuing of any order made by the Court on such application.

116. (1) A copy of the official Gazette containing any notice inserted in pursuance of this Act shall be evidence of the facts stated in the notice.

(2) A copy of the official Gazette containing any notice of an order of adjudication shall be conclusive evidence of the order having been duly made, and of its date.

Swearing of affidavits.

117. Any affidavit may be used in a Court having jurisdiction under this Act if it is sworn—

(h) A, a guardian, buys up for himself incumbrances on his ward B's estate at an undervalue. A holds for the benefit of B the incumbrances so bought, and can only charge him with what he has actually paid.

89. Where, by the exercise of undue influence, any advantage is gained in derogation of the interests of another, the person gaining such advantage without consideration, or with notice that such influence has been exercised, must hold the advantage for the benefit of the person whose interests have been so prejudiced.

90. Where a tenant for life, co-owner, mortgagee, or other qualified owner of any property, by availing himself of his position as such, gains an advantage in derogation of the rights of the other persons interested in the property, or where any such owner, as representing all persons interested in such property, gains any advantage, he must hold, for the benefit of all persons so interested, the advantage so gained, but subject to repayment by such persons of their due share of the expenses properly incurred, and to an indemnity by the same persons against liabilities properly contracted, in gaining such advantage.

Illustrations.

(a) A, the tenant for life of leasehold property, renews the lease in his own name, and for his own benefit: A holds the renewed lease for the benefit of all those interested in the old lease.

(b) A village belongs to a Hindu family. A one of its members pays nazrana to Government, and thereby procures his name to be entered as the inamdar of the village. A holds the village for the benefit of himself and the other members.

(c) A mortgages land to B who enters into possession. B allows the Government revenue to fall into arrear with a view to the land being put up for sale, and his becoming himself the purchaser of it. The land is accordingly sold to B: Subject to the repayment of the amount due on the mortgage, and of his expenses properly incurred as mortgagee, B holds the land for the benefit of A.

91. Where a person acquires property with notice that another person has entered into an existing contract affecting that property, of which specific performance could be enforced, the former must hold the property for the benefit of the latter to the extent necessary to give effect to the contract.

120. Save as herein provided, the provisions of this Act relating to the remedies against the property of a debtor, the priorities of debts, the effect of a composition or scheme of arrangement, and the effect of a discharge, shall bind the Crown.

121. Nothing in this Act, or in any transfer of jurisdiction effected thereby, shall take away or affect any right of audience that any person may have had immediately before the commencement of this Act, or shall be deemed to confer such right in insolvency matters on any person who had not a right of audience before the Courts for the Relief of Insolvent Debtors.

122. Where the Official Assignee has under his control any dividend which has remained unclaimed for fifteen years from the date of declaration or such less period as may be prescribed, he shall pay the same to the account and credit of the Government of India, unless the Court otherwise directs.

123. Any person claiming to be entitled to any moneys paid to the account and credit of the Government of India under section 122 may apply to the Court for an order for payment to him of the same; and the Court, if satisfied that the person claiming is entitled, shall make an order for payment to him of the sum due :

Provided that, before making an order for the payment of a sum which has been carried to the account and credit of the Government of India, the Court shall cause a notice to be served on such officer as the Governor-General in Council may appoint in this behalf, calling on the officer to show cause, within one month from the date of the service of the notice, why the order should not be made.

124. (1) No person shall, as against the Official Assignee, be entitled to withhold possession of the books of accounts belonging to the insolvent, or to set up any lien thereon.

(2) Any creditor of the insolvent may, subject to the control of the Court, and on payment of such fee, if any, as may be prescribed, inspect at all reasonable times, personally or by agent, any such books in the possession of the Official Assignee.

92. Where a person contracts to buy property to be held on trust for certain beneficiaries, and buys the property accordingly, he must hold the property for their benefit to the extent necessary to give effect to the contract.

93. Where creditors compound the debts due to them, and one of such creditors, by a secret arrangement with the debtor, gains an undue advantage over his co-creditors, he must hold, for the benefit of such creditors, the advantage so gained.

94. In any case not coming within the scope of any of the preceding sections, where there is no trust, but the person having possession of property has not the whole beneficial interest therein, he must hold the property for the benefit of the persons having such interest, or the residue thereof (as the case may be), to the extent necessary to satisfy their just demands.

Illustrations.

(a) A, an executor, distributes the assets of his testator, B, to the legatees without having paid the whole of B's debts: The legatees hold for the benefit of B's creditors, to the extent necessary to satisfy their just demands, the assets so distributed.

(b.) A by mistake assumes the character of a trustee for B, and under colour of the trust, receives certain moneys. B may compel him to account for such moneys.

(c) A makes a gift of a lakh of rupees to B, reserving to himself, with B's assent, power to revoke at pleasure the gift as to Rs. 10,000. The gift is void as to Rs. 10,000, and B holds that sum for the benefit of A.

95. The person holding property in accordance with any of the preceding sections of this chapter must, so far as may be, perform the same duties, and is subject, so far as may be, to the same liabilities and disabilities, as if he were a trustee of the property for the person for whose benefit he holds it:

Provided that (a), where he rightfully cultivates the property, or employs it in trade or business, he is entitled to reasonable remuneration for his trouble, skill, and loss of time in such cultivation or employment; and (b), where he holds the property by virtue of a

sonally, or sent by prepaid post letter, as may be convenient. The Official Assignee may, if he thinks fit, also publish the time and place of any meeting in any local newspaper, or in the local official Gazette.

4. It shall be the duty of the insolvent to attend any meeting which the Official Assignee may, by notice, require him to attend and any adjournment thereof. Such notice shall be either delivered to him personally or sent to him at his address by post at least three days before the date fixed for the meeting.

5. The proceedings held and resolutions passed at any meeting shall, unless the Court otherwise orders, be valid notwithstanding that any creditor has not received the notice sent to him.

6. A certificate of the Official Assignee, that the notice of any meeting has been duly given, shall be sufficient evidence of such notice having been duly sent to the person to whom the same was addressed.

7. Where, on the request of creditors, the Official Assignee summons a meeting, there shall be deposited with the written request the sum of five rupees for every twenty creditors for the costs of summoning the meeting, including all disbursements : Provided that the Official Assignee may require such further sum to be deposited as in his opinion shall be sufficient to cover the costs and expenses of the meeting.

8. The Official Assignee shall be the Chairman of any meeting.

9. A creditor shall not be entitled to vote at a meeting unless he has duly proved a debt proveable in insolvency to be due to him from the insolvent, and the proof has been duly lodged one clear day before the time appointed for the meeting.

10. A creditor shall not vote at any such meeting in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained.

11. For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof the particulars of his security, the

8. Whenever any Court is constituted under this Act, notice of constitution thereof shall be given by a written proclamation, copies of which shall be affixed in the several Courts, and in the offices of the several Collectors and Magistrates of the district;

and, from the date of the issue of such proclamation, no other Claims not cognizable in Court shall be competent to entertain any claim or objection belonging to the class of claims or objections for the trial and determination of which such Court is constituted.

9. The Courts constituted under this Act shall be held at Special Courts where such place or places within the limits of their respective jurisdictions as shall be considered most convenient.

10. In every suit instituted under section 5 of this Act, the Plaintiff and defendant in claimant of the waste land or objector to the sale or other disposition of such land shall appear as plaintiff, and the Collector or other officer aforesaid shall appear as defendant on the part of Government.

Appearance. Either party may appear by pleader or by agent:

Provided that, if such other officer as aforesaid be the presiding officer of the principal Civil Court of original jurisdiction in the district, the Local Government shall appoint some other officer to appear as defendant in the case on its behalf.

In any suit ordered to be instituted by the Local Government Plaintiff and defendant in suit under section 6 under section 6 of this Act, the Government, by any officer to be appointed for the purpose, shall appear as plaintiff; and the claimant or objector as aforesaid shall appear as defendant.

11. In suits instituted under this Act, except as here- Regulation of proceedings. After provided, the proceedings shall be regulated, so far as they can be, by the Code of Civil Procedure.*

12. The Court shall fix a day for the appearance of the parties, and for the hearing of the suit, Procedure before hearing. of which due notice shall be given to

case the instrument of proxy shall state the relation in which the person to act thereunder stands to the creditor.

19. A proxy shall not be used unless it is deposited with the Official Assignee one clear day before the time appointed for the meeting at which it is to be used.

Proxy to be deposited one day before date of meeting.

20. A creditor may appoint the Official Assignee as proxy. Official Assignee to act as his proxy.

21. The Official Assignee may adjourn the meeting from time to time, and from place to place, and no notice of the adjournment shall be necessary.

Adjournment of meeting.

22. The Official Assignee shall draw up a minute of the proceedings at the meeting, and shall sign the same.

Minute of proceedings.

THE SECOND SCHEDULE.

(See section 48.)

PROOF OF DEBTS.

Proofs in Ordinary Cases.

1. Every creditor shall lodge the proof of his debt as soon as may be after the making of an order of adjudication.

Time for lodging proof.

2. A proof may be lodged by delivering or sending by post in a registered letter to the Official Assignee an affidavit verifying the debt.

Mode of lodging proof.

3. The affidavit may be made by the creditor himself, or by some person authorized by or on behalf of the creditor. If made by a person so authorized, it shall state his authority and means of knowledge.

Authority to make affidavit.

4. The affidavit shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers, if any, by which the same can be substantiated. The Official Assignee may at any time call for the production of the vouchers.

Contents of affidavit.

the parties or their agents; and, on the day so fixed, the parties or their agents shall bring their witnesses into Court together with any documents on which they may intend to rely in support of their respective statements.

If either party require the assistance of the Court to procure Procuring attendance of the attendance of a witness on such day, witnesses. he shall apply to the Court in sufficient time before the day fixed for the hearing of the suit; and the Court shall issue a subpoena requiring such witness to attend the Court on that day.

It shall be competent to the Court to require the personal Power to require attendance of the claimant of the waste land or objector as aforesaid on the day fixed for the hearing, or at any subsequent stage of the suit.

13. On the day fixed for the hearing of the suit, or as soon after as may be practicable, the Court Procedure on hearing. shall proceed to examine the claimant of the waste land or the objector, or his agent (when his personal attendance is not required), and the witnesses of the parties;

and upon such examination, and after inspecting the documents of the parties, and making any further enquiry that may appear necessary, shall proceed to pass such order in the case as it may consider just and proper.

14. No appeal shall lie from any decision or order passed under this Act, nor shall any such decision or order be open to revision. No appeal or revision.

15. If, on the trial of any suit under this Act, any question of Reference of question of law, or of usage having the force of law, or the construction of a document affecting the merits of the case, shall arise, on which the Court shall entertain reasonable doubts, the Court may, either of its own motion, or on the application of any of the parties to the suit, draw up a statement of the case, and submit it, with its own opinion, for the opinion of the High Court of Judicature, or of the highest Civil Court of appeal and revision in the territory in which the land is situate:

Provided that it shall be the duty of every Court held under this Act to make such reference to such High Court, or Court of appeal, if, in any When reference obligatory.

Provided that the creditor may at any time, by notice in writing, require the Official Assignee to elect whether he will or will not exercise his power of redeeming the security, or requiring it to be realized, and if the Official Assignee does not, within six months after receiving the notice, signify in writing to the creditor his election to exercise the power, he shall not be entitled to exercise it; and the equity of redemption, or any other interest in the property comprised in the security which is vested in the Official Assignee, shall vest in the creditor, and the amount of his debt shall be reduced by the amount at which the security has been valued.

13. Where a creditor has so valued his security, he may at any time amend the valuation and proof on showing, to the satisfaction of the Official Assignee or the Court, that the valuation and proof were made *bond fide* on a mistaken estimate, or that the security has diminished or increased in value since its previous valuation; but every such amendment shall be made at the cost of the creditor, and upon such terms as the Court shall order, unless the Official Assignee shall allow the amendment without application to the Court.

14. Where a valuation has been amended in accordance with the foregoing rule, the creditor shall forth with repay any surplus dividend which he has received in excess of that to which he would have been entitled on the amended valuation, or, as the case may be, shall be entitled to be paid, out of any money for the time being available for dividend, any dividend or share of dividend which he has failed to receive by reason of the inaccuracy of the original valuation before that money is made applicable to the payment of any future dividend, but he shall not be entitled to disturb the distribution of any dividend declared before the date of the amendment.

15. If a creditor, after having valued his security, subsequently realizes it, or if it is realized under the provisions of rule 12, the net amount realized shall be substituted for the amount of any valuation previously made by the creditor, and shall be treated in all respects as an amended valuation made by the creditor.

16. If a secured creditor does not comply with the foregoing rules, he shall be excluded from all share in any dividend.

suit under this Act, any question shall arise involving any principle of general importance, or the rights of a class.

16. The Court may proceed in the case notwithstanding a Court may proceed notwithstanding reference to the High Court, or other reference, highest Civil Court of appeal as aforesaid, and may pass an order contingent upon the opinion of the High Court or other Court as aforesaid on the point referred ;

but no final order for the sale or other disposition of the land but not make final order. in question in the suit, or for the admission or rejection of any claim or objection which shall be before the Court in such suit, shall be passed until the receipt of the order of the said High Court or highest Civil Court of appeal.

17. The record of cases disposed of by Courts constituted Records of cases where to under this Act shall be deposited amongst the deposited, the records of the principal Civil Court of original jurisdiction in the district in which the property in dispute is situate.

18. No claim to any land, or to compensation or damages in Limitation as to claims to respect of any land, sold or otherwise land sold or dealt with dealt with on account of Government as waste land, shall be received after the expiration of three years from the date on which such land shall have been delivered by the Government to the purchaser, or otherwise dealt with.

If, within three years after any lands have been delivered by Provision for such claims the Government to the purchaser, or if preferred within the time otherwise dealt with, any claimant or objector shall prefer a claim to the land so delivered or otherwise dealt with, or an objection to such sale, or to compensation or damages in respect thereof, in the Court constituted under this Act for the district in which the land is situate, and shall show good and sufficient reason for not having preferred his claim or objection to the Collector or other officer as aforesaid within the period limited under section 1 of this Act, such Court shall file the claim or objection, making the claimant or objector plaintiff, and the Collector of the district or other officer as aforesaid (with the like provision as aforesaid if such other officer be the presiding officer of the principal Civil Court of original jurisdiction in the district) the defendant in the suit ;

and the foregoing provisions of this Act shall be applicable to the trial and determination of the matter.

the surplus of the sale moneys (if any) shall then be paid to the Official Assignee. But, if the moneys to arise from such sale are insufficient to pay and satisfy what is so found due to such mortgagee, then he shall be entitled to prove as a creditor for such deficiency, and receive dividends thereon rateably with the other creditors, but so as not to disturb any dividend then already declared.

21. For the better taking of such inquiries and accounts, and making a title to the purchaser, all parties may be examined by the Court upon interrogatories or otherwise as the Court thinks fit, and shall produce before the Court upon oath all deeds, papers, books, and writings in their respective custody or power relating to the estate or effects of the insolvent as the Court directs.

Periodical Payments.

22. When any rent or other payment falls due at stated periods, and the order of adjudication is made at any time other than one of those periods, the person entitled to the rent or payment may prove for a proportionate part thereof up to the date of the order as if the rent or payment grew due from day to day.

Interest.

23. (1) On any debt or sum certain whereon interest is not reserved or agreed for, and which is overdue when the debtor is adjudged an insolvent, and which is proveable under this Act, the creditor may prove for interest at a rate not exceeding six per centum per annum—

(a) if the debt or sum is payable by virtue of a written instrument at a certain time, from the time when such debt or sum was payable to the date of such adjudication; or,

(b) if the debt or sum is payable otherwise, from the time when a demand in writing has been made giving the debtor notice that interest will be claimed from the date of the demand until the time of payment to the date of such adjudication.

(2) Where a debt which has been proved in insolvency includes interest or any pecuniary consideration in lieu of interest,

The report of the officer employed to give delivery, or take possession, on the part of Government, of the land sold or otherwise dealt with, shall be conclusive evidence as to the date on which such delivery was made, or possession was taken.

19. In any case in which the land has been sold, if the Col.

If claim established, pos- shall be of opinion that the claim of th
session not to be given, but claimant is established, the Court shall
compensation. not award the claimant possession of the
land in dispute; but shall order him to receive from the Govern-
ment treasury, by way of compensation, a sum equal to the price at
which the land was sold in addition to the costs of suit.

20. If the land shall have been sold subject to any condition

When land sold not ab- or reservation, or shall not have been
solutely, or not sold, but sold, but shall have been otherwise dealt
otherwise dealt with. with on account of the Government, and
the Court shall be of opinion that the claim to such land or the
objection of an objector is established, the Court shall award the
claimant or objector to receive such sum in respect of his interest
in such land as shall be awarded in that behalf under the pro-
visions of Act VI. of 1857* (*for the acquisition of land for public
purposes*);

and thereupon the Local Government shall proceed under the
said Act to obtain an award of the value of such interest.

21. An award under any of the provisions of the two last

Award under two last sec- preceding sections shall be in full satis
tions to be in full satisfac- faction of the claim of the claimant o
tion. objector, and shall bar any future claim
on his part, in respect to the land in suit, resung on the same
cause of action, or on a cause of action which existed prior to
the date of the sale or other disposition of the land on account of
Government.

22 Nothing in this Act shall be held to prevent the Loc

Government not barred Government from awarding to an
from awarding compensa- claimant of waste land sold on accou
tion for land absolutely sold, of Government, on proof to the satisfac
though claim be not prefer- tion of the Local Government of th
red in time. claim of such claimant (notwithstand
ing that he may not have preferred his claim either to the Collecto

* This reference to Act VI. of 1857 should now be meant to apply to
the Land Acquisition Act (I. of 1894).—See s. 2 (3) of the latter Act.

THE THIRD SCHEDULE.

(See section 127.)

ENACTMENTS REPEALED.

Year.	No.	Short title.	Extent of repeal.
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I.—Statute.

1848	11 & 12 Vict, c. 21.	The Indian Insolvency Act, 1848	So much as has not been repealed.
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II.—Acts of the Governor-General in Council.

1841	XXVII.	The Insolvent Estates (Unclaimed Dividends) Act, 1841.	So much as has not been repealed.
1898	X	The Indian Insolvency Rules Act, 1898	Sections 2 and 3.
1900	VI	The Lower Burma Courts Act.	Section 8, sub-section (1), clause (d), and sub-section (2), and, in section 17, in sub-section (1), the words "an official assignee", and, in sub-sections (2) and (4), the words "official assignee."
1908	V.	The Code of Civil Procedure, 1908.	Section 120, sub-section (2).

ACT NO. V. OF 1881.

The Probate and Administration Act, 1881.

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The procedure prescribed by the Code of Civil Procedure* for the execution of decrees by Courts other than those which made them shall be the procedure followed in such cases.

32. Notwithstanding anything contained in the Code of Civil Procedure* as applied by this Act, any minor may institute a suit for any sum of money, not exceeding five hundred rupees, which may be due to him under section 70 of the Indian Contract Act, 1872,† for wages or piece-work, or for work as a servant, in the same manner as if he were of full age.

33. Any non judicial or quasi judicial act which the Code of Civil Procedure,‡ as applied by this Act, requires to be done by a Judge, and any act which may be done by a Commissioner appointed to examine and adjust accounts under section 394 of that Code as so applied, may be done by the Registrar of the Small Cause Court, or by such other officer of that Court as that Court may, from time to time, appoint in this behalf.

The High Court may, from time to time, by rule declare what shall be deemed to be non-judicial and quasi-judicial acts within the meaning of this section §

34. The suits cognizable by the Registrar under section 14 shall be heard and determined by him in like manner in all respects as a Judge of the Court might hear and determine the same:

Provided that, subject to the control of the Chief Judge, any Judge of the Court may, whenever he thinks fit, transfer to his own file any suit on the file of the Registrar.

* See Act XIV of 1852, Ch. XIX.—But see now the new Code (Act V. of 1908), add its portion corresponding to Ch. XIX. of the Code of 1852

† Act IX. of 1872.

‡ Act XIV. of 1882.—See now the new Code (Act V. of 1908)

§ For rules in Madras declaring certain duties to be non-judicial or quasi-judicial acts, which may be done by the Registrar of the Small Cause Court, see Madras List of Local Rules and Orders, Vol I, Ed. 1896, p. 201.

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on him, whichever period shall last expire, apply *ex parte* on an affidavit setting forth the facts on which he relies for his defence to a Judge of the High Court for an order removing the cause into the High Court.

* "(2) Unless the Judge is of opinion that the application has been made solely for the purpose of delay, the applicant shall be entitled to such order as of right :

" Provided that the removal directed by such order shall, unless the Judge otherwise directs, be conditional upon the applicant giving security, to the approval of the Judge, within a reasonable time to be prescribed in the order, for the payment of the amount claimed, and of the costs which may become payable by him to the plaintiff in respect of the said suit."

(3) If the applicant fail or neglect to complete the required security (if any), within the prescribed time (if any), the said order shall be discharged, and the suit shall proceed in the Small Cause Court as if such order had never been made.

(4) If the plaintiff in any case which has been removed under this section into the High Court has abandoned a portion of his claim in order to be able to bring the suit within the jurisdiction of a Small Cause Court, he shall be permitted to revive the portion of his claim so abandoned.

40. (1) When a suit has been removed into the High Court under the last foregoing section, it shall be heard and disposed of by such Court in the exercise of its original jurisdiction, and the said Court shall have all the same powers and jurisdiction in respect thereof as if it had been originally instituted in such Court.

(2) In every suit so removed as aforesaid, the affidavit filed under section 39, sub-section (1), shall be treated as a written statement of the defendant tendered under section 110 of the Code of Civil Procedure † unless the Court shall otherwise order.

(3) In every suit so removed as aforesaid, credit shall be given to the plaintiff for the amount of the court-fee paid in the Small Cause Court in respect of the plaint in the levy of any fees which,

* In s. 39, sub-s. (2) and the *proviso* have been substituted for original sub-s. (2) by the Presidency Small Cause Courts Act (IV of 1906), s. 3
 † Act XIV. of 1882.—See now the new Code (Act V. of 1908).

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- 151. [*Repeal of portions of Act XXVII. of 1860.*] *Repealed by the Succession Certificate Act (VII. of 1889).*

Explanation.—If the occupant proves that the tenancy was created or permission granted by virtue of a title which determined previous to the date of the application, he shall be deemed to have shown cause within the meaning of this section.

44. Any such order shall justify the bailiff to whom it is addressed in entering, after the hour of six in the morning, and before the hour of six in the afternoon, upon the property named therein, and such assistants as he thinks necessary, and giving possession of such property to the applicant; and no suit or prosecution shall be maintainable against any Judge or officer of the Small Cause Court by whom any such order as aforesaid was issued, or against any bailiff or other person by whom the same was executed, or by whom any such summons as aforesaid was served, for the issue, execution, or service of any such order or summons, by reason only that the applicant was not entitled to the possession of the property.

Such order to justify bailiff entering on property, and giving possession.
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45. When the applicant, at the time of applying for any such order as aforesaid, was entitled to the possession of such property, neither he nor any person acting in his behalf shall be deemed, on account of any error, defect, or irregularity in the mode of proceeding to obtain possession thereunder, to be a trespasser; but any person aggrieved may bring a suit for the recovery of compensation for any damage which he has sustained by reason of such error, defect, or irregularity.

Applicant, if entitled to possession, not to be deemed trespasser for any error in proceedings.
Occupant may sue for compensation.

When no such damage is proved, the suit shall be dismissed; and when such damage is proved, but the amount of the compensation assessed by the Court does not exceed ten rupees, the Court shall award to the plaintiff no more costs than compensation unless the Judge who tries the case certifies that in his opinion full costs should be awarded to the plaintiff.

46. Nothing herein contained shall be deemed to protect any applicant obtaining possession of any property under this chapter from a suit by any person deeming himself aggrieved thereby, when such applicant was not at the time of applying for such order as aforesaid, entitled to the possession of such property.

Liability of applicant obtaining order when not entitled.

ACT NO. V. OF 1881.*

The Probate and Administration Act, 1881.

RECEIVED THE G.-G.'S ASSENT ON THE 21ST JANUARY 1881.

An Act to provide for the Grant of Probates of Wills and Letters of Administration to the Estates of certain Deceased Persons.

WHEREAS it is expedient to provide for the grant of probate of wills and letters of administration to the estates of deceased persons in cases to which the Indian Succession Act, 1865,† does not apply; It is hereby enacted as follows:—

Preamble.

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called the Probate and Administration Act, 1881:

Local extent.

It applies to the whole of British India;

Commencement.

and it shall come into force on the first day of April 1881.

* For Statement of Objects and Reasons, see *Gazette of India*, 1879, Pt. V, p. 763; for the First Report of the Select Committee, see *ibid* 1880, Pt. V., p. 35; for Discussions in Council, see *ibid*, 1879, Supplement, pp. 593 and 743; 1880, pp. 515, 556; and *ibid*, 1881, pp. 10, 47, and 87.

Act V of 1881 has been declared in force in the town of Mandalay by the Upper Burma Laws Act (XX of 1886), s. 6; and in British Baluchistan by the British Baluchistan Laws Regulation (I. of 1890), s. 3; and ss. 153 and 154 of the Act have been declared in force in the Santhal Parganas by the Santhal Parganas Settlement Regulation (III. of 1873), s. 3, as amended by the Santhal Parganas Laws Regulation (III. of 1886), s. 2.

It has been declared, under s. 3 (a) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following deregulationized Scheduled Districts in the Chutia Nagpur Division, namely, the Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singhbhum.—See *Gazette of India*, 1881, Pt. I, p. 504. (The District of Lohardaga included at this time the Palaman District, which was separated in 1894.)

It has been extended, under s. 5 of the same Act, to the whole of Upper Burma except the Shan States.—See *Burma Gazette* 1893, Pt. I, p. 154.

† Act X. of 1865.

Saving of certain rents.

But nothing contained in this chapter applies—

(a) to any rent due to Government ;

(b) to any rent which has been due for more than twelve months before the application mentioned in section 53.

51. The Judges of the Small Cause Court may appoint four Appointment of bailiffs or more persons to be bailiffs and appraisers. praisers for the purpose of this chapter, and may, from time to time, with the previous sanction of the Local Government, fix such remuneration for the services of such officers as the said Judges think fit, and may suspend or remove them.

52. The persons so appointed shall give security, to be Security to be given by approved by the said Judges, faithfully appointees. to discharge the duties of their office, and they shall be deemed to be public servants within the meaning of the Indian Penal Code.

53. Any person claiming to be entitled to arrears of rent Application for distress- of any house or premises to which this warrant. chapter extends, or his duly-constituted attorney, may apply to any Judge of the Small Cause Court, or to the Registrar of the Small Cause Court, for such warrant as is hereinafter mentioned

The application shall be supported by an affidavit or affirmation to the effect of the Form (marked A) in the Third Schedule hereto annexed.

54. The Judge or Registrar may thereupon issue a warrant Issue of distress-warrant. under his hand and seal, and returnable within six days, to the effect of the Form (marked B) contained in the same Schedule addressed to any one of such bailiffs.

The Judge or Registrar may, at his discretion, upon personal examination of the person applying for such warrant, decline to issue the same.

55 Every distress under this chapter shall be made after Time for distress. sunrise and before sunset, and not at any other time.

56. The bailiff directed to make the distress may force open What places bailiff may any stable, out-house, or other building, force open. and may also enter any dwelling-house

Interpretation-clause.

3.* In this Act, unless there be something repugnant in the subject or context,—

“province” includes any division of British India, having a Court of the last resort:

“minor” means any person subject to the Indian Majority Act, 1875,† who has not attained his majority within the meaning

in the Punjab—the Chief Court, throughout the territories administered by the Lieutenant-Governor of the Punjab; all District Judges, as defined in the Act, within the said territories; and such Judicial Officers as the Chief Court may, from time to time, appoint as District Delegates (see *Punjab Gazette*, 1881, Pt. I, p. 483),

in Madras—the High Court at Madras, throughout the territories subject to the Governor in Council; all District Judges, as defined in the Act, within the said territories, and such Judicial Officers as the High Court may, from time to time, appoint as Delegates (see Madras List of Local Rules and Orders, Ed 1898, p 161),

in the Central Provinces—the Judicial Commissioner, throughout the territories under the administration of the Chief Commissioner, and all Deputy Commissioners within those territories (see Central Provinces List of Local Rules and Orders, Ed. 1896, p 97),

in Coorg—the Court of the Judicial Commissioner and the Court of the Commissioner (see *Coorg District Gazette*, 1889, Pt. I, p. 50);

in Bombay—the High Court at Bombay, throughout the territories subject to the Governor in Council, all District Judges, as defined in the Act, within the said territories; and such Judicial Officers as the High Court may, from time to time, appoint as District Delegates (see Bombay List of Local Rules and Orders, Ed 1896, Vol. I, p. 252),

in Ajmere-Merwara—the Court of the Chief Commissioner and the Court of the Commissioner (see *Gazette of India*, 1889, Pt. II, p. 534);

in the N.-W Provinces and Oudh—the High Court at Allahabad, throughout the territories subject to the Lieutenant-Governor; the Judicial Commissioner of Oudh, throughout the territories subject to the Chief Commissioner; all District Judges, as defined in the Act, within the N.-W. Provinces and Oudh, and such Judicial Officers as the High Court or the Judicial Commissioner may, from time to time, appoint as District Delegates (see N.-W Provinces and Oudh List of Local Rules and Orders, Ed 1894, Pt. II, p 48),

in Upper Burma, the Court of the Judicial Commissioner and all District Courts (see *Burma Gazette*, 1897, Pt. I, p. 289).

* Compare Act X. of 1865, s. 3.

† Act IX. of 1875.

article, and such Judge may discharge or suspend such warrant, or release such article accordingly, upon such terms as he thinks just ;

and any of the Judges of the said Court may, in his discretion, give reasonable time to the debtor to pay the rent due from him.

Upon any such application, the costs attending it, and attending the issue and execution of the warrant, shall be in the discretion of the Judge, and shall be paid as he directs.

61. If any claim is made to, or in respect of, any property Claim to goods distrained seized under this chapter, or in respect made by a stranger. of the proceeds or value thereof, by any person not being the debtor, the Registrar of the Small Cause Court, upon the application of the bailiff who seized the property, may issue a summons, calling before the Court the claimant and the person who obtained the warrant.

And thereupon any suit which may have been brought in the High Court in respect of such claim shall be stayed, and any Judge of the High Court, on proof of the issue of such summons, and that the property was so distrained, may order the plaintiff to pay the costs of all proceedings in such suit after the issue of such summons.

And a Judge of the Small Cause Court shall adjudicate upon such claim, and make such order between the parties in respect thereof, and of the costs of the proceedings, as he thinks fit,

and such order shall be enforced as if it were an order made in a suit brought in such Court.

The procedure in Small Cause Courts in cases under this section shall conform, as far as may be, to the procedure in an ordinary suit in such Courts.

62 In any case under section 60 or section 61, the Judge by whom the case is heard may award such Power to award compensation to debtor or claimant. compensation by way of damages to the applicant or claimant (as the case may be) as the Judge thinks fit,

and may, for that purpose, make any enquiry he thinks necessary ;

and the order of the Judge awarding or refusing such compensation shall bar any suit for the recovery of compensation for any damage caused by the distress.

18. If the executor renounce or fail to accept the executorship within the time limited for the acceptance or refusal thereof, the will may be proved, and letters of administration, with a copy of the will annexed, may be granted to the person who would be entitled to administration in case of intestacy.

Procedure where executor renounces or fails to accept within time limited.

Grant of administration to universal or residuary legatee.

19. When the deceased has made a will, but has not appointed an executor, or

when he has appointed an executor, who is legally incapable or refuses to act, or has died before the testator, or before he has proved the will, or

when the executor dies after having proved the will, but before he has administered all the estate of the deceased,

a universal or a residuary legatee may be admitted to prove the will, and letters of administration, with the will annexed, may be granted to him of the whole estate, or of so much thereof as may be unadministered.

20. When a residuary legatee, who has a beneficial interest, survives the testator, but dies before the estate has been fully administered, his representative has the same right to administration, with the will annexed, as such residuary legatee.

21. When there is no executor and no residuary legatee or representative of a residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate, or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the will, and letters of administration may be granted to him or them accordingly.

22. Letters of administration, with the will annexed, shall not be granted to any legatee, other than an universal or a residuary legatee, until a citation has been issued and published in the manner hereinafter mentioned, calling on the next-of-kin to accept or refuse letters of administration.

Grant of administration where no executor, nor residuary legatee, nor representative of such legatee.

Citation before grant of administration to legatees other than universal or residuary.

satisfaction of the debt; and the surplus (if any) shall be returned to the debtor :

Provided that the debtor may direct that the sale shall take place in any other manner, first giving security for any extra costs thereby occasioned.

66. No costs of any distress under this chapter shall be taken or demanded except those mentioned in the Part (marked E) of the Third Schedule hereto annexed.

Costs of distresses.

The Judges of the Small Cause Court may apply the sum so raised as costs towards the payment of the contingent charges and remuneration of the said bailiffs, as appears to the said Judges expedient.

67. The Registrar of the Small Cause Court shall keep a book in which all sums received as costs upon distresses made under this chapter, and all sums paid as remuneration to the said bailiffs, and all contingent charges incurred in respect of such distresses, shall be duly entered.

Account of costs and proceeds.

He shall also enter in the said book all sums realized by sale of the property distrained and paid over to landlords under the provisions of this chapter.

Bar of distresses except under this chapter.

68. No distress shall be levied for arrears of rent except under the provisions of this chapter.

And any person, except a bailiff appointed under section 51, levying or attempting to levy any such distress, shall, on conviction before a Presidency Magistrate, be liable to be punished with fine which may extend to five hundred rupees, and with imprisonment for a term which may extend to three months, in addition to any other liability he may have incurred by his proceedings.

Penalty for making illegal distresses.

may be granted, limited until the will or an authenticated copy of it be produced.

(b.)—Grants for the Use and Benefit of Others having Right.

28. When any executor is absent from the province in which Administration with will application is made, and there is no annexed to attorney of absent executor within the province willing to act, letters of administration, with the will annexed, may be granted to the agent of the absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself.

29. When any person, to whom, if present, letters of administration, with the will annexed, might be granted, is absent from the province, letters of administration, with the will annexed, may be granted to his agent, limited as above mentioned.

Administration with will annexed to attorney of absent person, who, if present, would be entitled to administer.

30 When a person entitled to administration in case of intestacy is absent from the province, and no person equally entitled is willing to act, letters of administration may be granted to the agent of the absent person, limited as before mentioned.

Administration to attorney of absent person entitled to administer in case of intestacy.

31. When a minor is sole executor or sole residuary legatee, letters of administration, with the will annexed, may be granted to the legal guardian of such minor, or to such other person as the Court shall think fit, until the minor has attained his majority, at which period, and not before, probate of the will shall be granted to him.

Administration during minority of sole executor or residuary legatee.

32. When there are two or more minor executors, and no executor who has attained majority, or two or more residuary legatees, and no residuary legatee who has attained majority, the grant shall be limited until one of them has attained his majority.

Administration during minority of several executors or residuary legatees.

33. If a sole executor or a sole universal or residuary legatee, or a person who would be solely entitled to the estate of the intestate according to

Administration for use and benefit of lunatic.

Unless such security as aforesaid is at once furnished, the party against whom such contingent judgment has been given shall be deemed to have submitted to the same.

If no such security given, party to be deemed to have submitted to judgment.

CHAPTER X.

FEES AND COSTS.

Institution-fee.

71. A fee not exceeding—

(a) when the amount or value of the subject-matter does not exceed five hundred rupees—the sum of two annas in the rupee on such amount or value,

(b) when the amount or value of the subject-matter exceeds five hundred rupees—the sum of sixty-two rupees eight annas, and one anna in the rupee on the excess of such amount or value, over five hundred rupees,

shall be paid on the plaint in every suit and every application under* section 41; and no such plaint or application shall be received until such fee has been paid.

An additional fee of ten rupees shall be paid on the filing of every agreement under section 20.

72. The fees specified in the third and fourth columns of the

Fourth Schedule hereto annexed shall be paid previous to the issue, in any suit or in any proceeding under Chapter VII. of this Act, of the processes to which the said columns respectively relate, by the persons on whose behalf such processes are issued when the amount or value of the subject-matter exceeds the sum specified in the first column, but does not exceed the sum specified in the second column, of the said schedule.

73. Whenever any such suit or proceeding is settled by agreement of the parties before the hearing, Repayment of half fees on settlement before hearing. half the amount of all fees paid up to that time shall be repaid by the Small Cause Court to the parties by whom the same have been respectively paid.

* In s 71, the words and figures, "section 38 or," repealed by Act VII. of 1896 (an Act to amend Act XV. of 1882), s. 1, have here been omitted.

to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other suit which may be commenced in the same or in any other Court between the parties, or any other parties, touching the matters at issue in the said suit, and until a final decree shall be made therein and carried into complete execution.

39. If, at the expiration of twelve months from the date of any probate or letters of administration, the executor or administrator, to whom the same has or have been granted, is absent from the province within which the Court that has granted the probate or letters of administration is situate, such Court may grant, to any person whom it thinks fit, letters of administration limited to the purpose of becoming and being made a party to a suit to be brought against the executor or administrator, and carrying the decree which may be made therein into effect.

40. In any case in which it appears necessary for preserving the property of a deceased person, the Court, within whose district any of the property is situate, may grant, to any person whom such Court thinks fit, letters of administration limited to the collection and preservation of the property of the deceased, and giving discharges for debts due to his estate, subject to the directions of the Court.

41. When a person has died intestate, or leaving a will of which there is no executor willing and competent to act, or where the executor is, at the time of the death of such person resident out of the province, and it appears to the Court to be necessary or convenient to appoint some person to administer the estate or any part thereof other than the person who, under ordinary circumstances, would be entitled to a grant of administration, the Judge may, in his discretion, having regard to consanguinity amount of interest, the safety of the estate, and probability that it will be properly administered, appoint such person as he thinks fit to be administrator;

and, in every such case, letters of administration may be limited or not, as the Judge thinks fit.

79. If any clerk, bailiff, or other inferior ministerial officer of the Small Cause Court, who is employed as such in the execution of any order or warrant, loses, by neglect, connivance, or omission, an opportunity of executing such order or warrant, he shall be liable, by order of the Chief Judge, on the application of the person injured by such neglect, connivance, or omission, to pay such sum not exceeding in any case the sum for which the said order or warrant was issued, as, in the opinion of the Chief Judge, represents the amount of the damage sustained by such person thereby.

80. If any clerk, bailiff, or other inferior ministerial officer of the Small Cause Court is charged with extortion or misconduct while acting under colour of its process, or with not duly paying or accounting for any money levied by him under its authority, the Court may inquire into such charge, and may make such order for the repayment or payment of any money so extorted, or of any money so levied as aforesaid, and of damages and costs, by such officer, as it thinks fit.

81. For the purposes of any inquiry under this chapter, the Court empowered to summon witnesses, &c. Small Cause Court shall have all the powers of summoning and enforcing the attendance of witnesses, and compelling the production of documents, which it possesses in suits under this Act.

82. Any order under this chapter for the payment or repayment of money may, in default of payment of the amount payable thereunder, be enforced by the person to whom such amount is payable as if the same were a decree of the Small Cause Court in his favour.

CHAPTER XII.

CONTEMPT OF COURT.

83. When any such offence as is described in section 175, 178, 179, 180, or 228 of the Indian Penal Code,* is committed in the view or presence of the Small Cause Court, the Court may cause the

* Act XLV. of 1860.

CHAPTER IV.

ALTERATION AND REVOCATION OF GRANTS.*

48. Errors in names and descriptions, or in setting forth the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the Court, and the grant of probate or letters of administration may be altered and amended accordingly.

49. If, after the grant of letters of administration with the will annexed, a codicil be discovered, it may be added to the grant on due proof and identification, and the grant altered and amended accordingly.

Revocation or annulment for just cause.

50. The grant of probate or letters of administration may be revoked or annulled for just cause.

"Just cause."

Explanation.—"Just cause" is—

1st, that the proceedings to obtain the grant were defective in substance;

2nd, that the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case;

3rd, that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently;

4th, that the grant has become useless and inoperative through circumstances;

† *5th*, that the person to whom the grant was made has, wilfully and without reasonable cause, omitted to exhibit an inventory or account in accordance with the provisions of Chapter VII. of this Act, or has exhibited under that chapter an inventory or account which is untrue in a material respect.

Illustrations.

(a.) The Court by which the grant was made had no jurisdiction.

* Compare Act X. of 1865, Pt. XXX. (g) and (h).

† Cl. 5th has been added by the Probate and Administration Act (VI. of 1889), s. 11.

his submission to the order or requisition of the Court, or on apology being made to its satisfaction.

87. If any witness before the Small Cause Court refuses to answer such questions as are put to him, or to produce any document in his possession or power which the Court requires him to produce, and does not offer any reasonable excuse for such refusal, the Court may sentence him to simple imprisonment, or commit him to the custody of an officer of the Court for any term not exceeding seven days, unless, in the meantime, such person consents to answer such questions, or to produce such document, as the case may be, after which, in the event of his persisting in his refusal, he may be dealt with according to the provisions of section 83 or section 85.

88. Any person deeming himself aggrieved by an order under section 83 or section 87 may appeal to the High Court, and the provisions of the Code of Criminal Procedure* relating to appeals shall, so far as may be, apply to appeals under this section.

CHAPTER XIII.

MISCELLANEOUS.

89. Notices to produce documents, summonses to witnesses, and all other processes issued in the exercise of any jurisdiction conferred on the Small Cause Court by this Act, except summonses to defendants and writs of execution, may, if the Court, by general or special order, so directs, be served by such persons as the Court, from time to time, appoints in this behalf.

90. The Small Cause Court shall keep such registers, books, and accounts, and submit to the High Court such statements and returns, as may, subject to the approval of the Local Government, be prescribed by the High Court.

91. The Small Cause Court shall comply with such requisitions as may, from time to time, be made by the Local Government or High Court for records, returns, and state-

* See now Act V. of 1898, Ch. XXXI. and s. 3 (1).

54. The District Judge may order any person to produce and bring into Court any paper or writing being or purporting to be testamentary papers. which may be shown to be in the possession or under the control of such person ;

and, if it be not shown that any such paper or writing is in the possession or under the control of such person, but there is reason to believe that he has the knowledge of any such paper or writing, the Court may direct him to attend for the purpose of being examined respecting the same ;

and he shall be bound to answer such questions as may be put to him by the Court, and if so ordered, to produce and bring in such paper or writing, and shall be subject to the like punishment under the Indian Penal Code,* in case of default in not attending, or in not answering such questions or not bringing in such paper or writing, as he would have been subject to in case he had been a party to a suit, and had made such default ;

and the costs of the proceeding shall be in the discretion of the Judge.

55. The proceedings of the Court of the District Judge, in relation to the granting of probate and letters of administration, shall, except as hereinafter otherwise provided, be regulated, so far as the circumstances of the case will admit, by the Code of Civil Procedure†

56. Probate of the will or letters of administration to the estate of a deceased person may be granted by the District Judge under the seal of his Court, if it appears by a petition, verified as hereinafter mentioned, of the person applying for the same, that the testator or intestate, as the case may be, had, at the time of his decease, a fixed place of abode, or any property, moveable or immoveable, within the jurisdiction of the Judge.

57. When the application is made to the Judge of a district in which the deceased had no fixed abode at the time of his death, the Judge may in his discretion, refuse the application, if, in his judgment, it could be

* See Act XLV. of 1860.

† See now Act XIV. of 1882, s. 3.

THE FIRST SCHEDULE.

(See section 2.)

ENACTMENTS REPEALED.

A.—Charters of the Supreme Courts.

Date.		Extent of repeal.
26th Mar. 1774 ...	Charter of the Supreme Court at Fort William.	Clause 21.
26th Dec. 1800 ...	Charter of the Supreme Court at Madras.	Clause 47.
8th Dec. 1823 ...	Charter of the Supreme Court at Bombay.	Clause 59.

B.—Acts of the Governor-General in Council.

Number and year.	Subject or short title.	Extent of repeal.
IX. of 1850 ...	For the more easy recovery of small debts and demands in Calcutta, Madras, and Bombay.	So much as has not been repealed
XX of 1857 ..	To amend Act IX. of 1850 ...	The whole.
XXVI. of 1864 ...	To extend the jurisdiction of the Courts of Small Causes at Calcutta, Madras, and Bombay, and to provide for the appointment of an increased number of Judges of those Courts	So much as has not been repealed.
I. of 1875 ...	To regulate Distresses for Rents in the Presidency-towns	The whole.
X of 1877* ...	The Code of Civil Procedure ...	Section 8, para 2.

* At the time Act XV of 1882 was passed, the whole of Act X of 1877 had been repealed by the Code of Civil Procedure (Act XIV of 1882), which, now in its turn, has been superseded by the new Code (Act V of 1908).

proviso to section 59, the High Court or District Judge shall send a certificate thereof to the following Courts, namely:—

(a) when the grant has been made by a High Court, to each of the other High Courts,

(b) when the grant has been made by a District Judge, to the High Court to which such District Judge is subordinate and to each of the other High Courts.

(2) Every certificate referred to in sub-section (1) shall be to the following effect, namely:—

‘I, A B, Registrar [or as the case may be] of the High Court, of Judicature at [or as the case may be], hereby certify that on the [] day of [], the High Court of Judicature at [or as the case may be] granted probate of the will [or letters] has [or have] effect over all the property of the deceased throughout the whole of British India;’

and such certificate shall be filed by the High Court receiving the same.

(3) Where any portion of the assets has been stated by the petitioner, as hereinafter provided in sections 62 and 64, to be situate within the jurisdiction of a District Judge in another Province, the Court required to send the certificate referred to in sub-section (1) shall send a copy thereof to such District Judge, and such copy shall be filed by the District Judge receiving the same.”

61. The application for probate or letters of administration, if made and verified in the manner hereinafter mentioned, shall be conclusive for the purpose of authorizing the grant of probate or administration; and no such grant shall be impeached by reason that the testator or intestate had no fixed place of abode, or no property within the district at the time of his death unless by a proceeding to revoke the grant if obtained by a fraud upon the Court.

62. Application for probate or for letters of administration, with the will annexed, shall be made by a petition distinctly written in English, or in the language in ordinary use in proceedings before the Court, in which the application is made, with the will, or in the cases mentioned in sections 24, 25, and 26, a copy, draft, or statement of the contents thereof annexed, and stating—

THE SECOND SCHEDULE.

PORTIONS OF CIVIL PROCEDURE CODE EXTENDING TO COURT.

[Repealed by Act 1. of 1895, s. 12.]

THE THIRD SCHEDULE.

FORMS.

A.

(See section 53.)

In the Small Cause Court for

A. B.

(Plaintiff).

versus

C. D.

(Defendant).

A. B. of , in the town of , maketh oath [or affirms]
 and saith that C. D , of , is justly indebted to in
 the sum of Rs for arrears of rent of the house and premises
 No. , situated at , in the town of , due for
 months to wit, from to , at the rate of Rs per
 mensem.

Sworn [or affirmed] before me the day of 18 .

Judge [or Registrar].

B.

(See section 54.)

In the Small Cause Court for

FORM OF WARRANT.

I hereby direct you to distrain the moveable property of C D, on the
 house and premises situate at No , in the town of , for the sum
 of Rs and the costs of the distress, according to the provisions
 of Chapter VIII of the Presidency Small Cause Courts Act, 1882. Dated
 the day of 18 .

(Signed and sealed.)

To E F, Bailiff and Appraiser.

64. Application for letters of administration shall be made
Petition for letters of ad- ministration. by petition distinctly written as aforesaid, and stating—

the time and place of the deceased's death,

the family or other relatives of the deceased, and their respective residences,

the right in which the petitioner claims,

the amount of assets which are likely to come to the petitioner's hands.

In addition to these particulars, the petition shall further state,—

when the application is to a District Judge, that the deceased, at the time of his death, had a fixed place of abode, or had some property, situate within the jurisdiction of the Judge; and,

when the application is to a District Delegate, that the deceased, at the time of his death, had a fixed place of abode within the jurisdiction of such delegate.

“When the application is to the District Judge and any portion of the assets likely to come to the petitioner's hands is situate in another Province, the petition shall further state the amount of such assets in each Province and the District Judges within whose jurisdiction such assets are situate.”*

65. Every person applying to any of the Courts mentioned
Additional statements in petition for probate, &c. in the proviso to section 59 for probate of a will or letters of administration shall state in his petition, in addition to the matters respectively required by sections 62 and 64, that, to the best of his belief, no application has been made to any other Court for a probate of the same will or for letters of administration of the same state, intended to have such effect as last aforesaid,

or, where any such application has been made, the Court to which it was made, the person or persons by whom it was made, and the proceedings (if any) had thereon.

And the Court to which any application is made under the proviso to section 59 may, if it think fit, reject the same.

* This para. has been added by Act VIII. of 1903.

THE THIRD SCHEDULE—(concluded).

FORMS—(concluded).

E.

(See section 66.)

In the Small Cause Court for

SCALE OF FEES TO BE LEVIED IN DISTRAINTS FOR HOUSE-RENT.

Sums sued for.		Affidavit and war- rant to dis- train	Order to sell	Commis- sion.	Total.
Rs.	Rs	Rs A. P.	Rs A. P.	Rs A. P.	Rs A. P.
1 and under 5	..	0 4 0	0 8 0	0 8 0	1 4 0
5 "	10	0 8 0	0 8 0	1 0 0	2 0 0
10 "	15	0 8 0	0 8 0	1 8 0	2 8 0
15 "	20	0 8 0	1 0 0	2 0 0	3 8 0
20 "	25	0 12 0	1 0 0	2 8 0	4 4 0
25 "	30	1 0 0	1 0 0	3 0 0	5 0 0
30 "	35	1 0 0	1 0 0	3 8 0	5 8 0
35 "	40	1 0 0	1 8 0	4 0 0	6 8 0
40 "	45	1 4 0	2 0 0	4 8 0	7 12 0
45 "	50	1 8 0	2 0 0	5 0 0	8 8 0
50 "	60	2 0 0	2 0 0	6 0 0	10 0 0
60 "	80	2 8 0	2 8 0	6 8 0	11 8 0
80 to 100	.	3 0 0	3 0 0	7 0 0	13 0 0
Upwards of 100	...	3 0 0	3 0 0	7 per centum	... ..

The above scale includes all expenses, except in suits where the tenant disputes the landlord's claim, and witnesses have to be subpoenaed in which case each subpoena for sums under Rs 40 must be paid for at four annas each, and twelve annas above that amount, and also where peons are kept in charge of property distrained, four annas per day must be paid per man.

The citation shall be fixed up in some conspicuous part of the court-house, and also in the office of the Collector of the district, and otherwise published or made known in such manner as the Judge or Delegate issuing the same may direct.

"Where any portion of the assets has been stated by the petitioner to be situate within the jurisdiction of a District Judge in another Province, the District Judge issuing the same shall cause a copy of the citation to be sent to such other District Judge, who shall publish the same in the same manner as if it were a citation issued by himself, and shall certify such publication to the District Judge who issued the citation."*

70. Caveats against the grant of probate or letters of administration may be lodged with the District Judge or a District Delegate; and, immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge; and, immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased had his fixed place of abode at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same.

71. The caveat shall be to the following effect:—
 Form of caveat.
 "Let nothing be done in the matter of the estate of *A B*, late of _____, deceased, who died on the _____ day of _____ at _____, without notice to *C D*, of _____."

72. No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the Judge or District Delegate to whom the application has been made, or notice thereof has been given of its entry with some other Delegate, until after such notice to the person by whom the same has been entered, as the Court shall think reasonable.

73. A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate ought not to be granted in his Court.

* This para. has been added by Act VIII. of 1903.

a copy whereof is hereunto annexed, was proved and registered before me, and that administration of the property and credits of the said deceased, and in any way concerning his will was granted to _____, the executor in the said will named, *he having undertaken to administer the same, and to make a full and true inventory of the said property and credits, and exhibit the same in this Court within six months from the date of this grant, or within such further time as the Court may, from time to time, appoint; and also to render to this Court a true account of the said property and credits within one year from the same date, or within such further time as the Court may, from time to time, appoint.*²

"The day of 18."

77. Whenever it appears to the District Judge or District Delegate that letters of administration to the estate of a person deceased, with or without a copy of the will annexed, should be granted, he shall grant the same under the seal of his Court in manner following:—

"I, _____, Judge of the district of _____ [or
 Form of such grant. Delegate appointed for granting probate
 or letters of administration in (here in-
 sert the limits of the Delegate's jurisdiction)], hereby make known
 that, on the _____ day of _____, letters of adminis-
 tration (with or without the will annexed, as the case may be) of the
 property and credits of _____, late of
 deceased, were granted to _____, the father (or as the
 case may be) of the deceased, he having undertaken to administer the
 same, and to make a full and true inventory of the said property and
 credits, and exhibit the same in this Court within six months from
 the date of this grant, or within such further time as the Court may
 from time to time, appoint; and also to render to this Court a true

* The italicized words ending s. 76 have been substituted for the words, "he having undertaken to administer the same and to make a true inventory of the said property and credits, and to exhibit the same at or before the expiration of six months from the date of this grant, and also to render a true account of the said property and credits within one year from the same date," by the Probate and Administration Act (VI. of 1889), s. 12.

SECTIONS.

- 29. Approval of proposal by Court.
- 30. Order on approval.
- 31. Power to re-adjudge debtor insolvent.
- 32. Limitation of effect of composition or scheme.

Control over Person and Property of Insolvent.

- 33. Duties of insolvent as to discovery and realisation of property.
- 34. Arrest of insolvent
- 35. Re-direction of letters.
- 36. Discovery of insolvent's property.
- 37. Power to issue commissions.

Discharge of Insolvent.

- 38. Discharge of insolvent.
- 39. Cases in which Court must refuse an absolute discharge.
- 40. Hearing of application for discharge
- 41. Power to annul adjudication on failure to apply for discharge
- 42. Renewal of application and variation of terms of order.
- 43. Duty of discharged insolvent to assist in realisation of property
- 44. Fraudulent settlements.
- 45. Effect of order of discharge.

PART III.

ADMINISTRATION OF PROPERTY.

Proof of Debts

- 46. Debts proveable in insolvency
- 47. Mutual dealings and set-off.
- 48. Rules as to proof of debts.
- 49. Priority of debts
- 50. Rent due before adjudication.

Property available for Payment of Debts

- 51. Relation of assignee's title.
- 52. Description of insolvent's property divisible amongst creditors.

SECTIONS.

Effect of Insolvency on Antecedent Transactions.

- 53. Restriction of rights of creditor under execution
- 54. Duties of Court executing decree as to property taken in execution
- 55. Avoidance of voluntary transfer.
- 56. Avoidance of preference in certain cases
- 57. Protection of *bona-fide* transactions

Realisation of Property

- 58. Possession of property by Official Assignee.
- 59. Seizure of property of insolvent.
- 60. Appropriation of portion of pay or other income to creditors
- 61. Vesting and transfer of property.
- 62. Disclaimer of onerous property
- 63. Disclaimer of leaseholds
- 64. Power to call on Official Assignee to disclaim.
- 65. Power for Court to rescind contract
- 66. Power for Court to make vesting order in respect of disclaimed property
- 67. Persons injured by disclaimer may prove
- 68. Duty and powers of Official Assignee as to realisation.

Distribution of Property

- 69. Declaration and distribution of dividends
- 70. Joint and separate properties
- 71. Calculation of dividends.
- 72. Right of creditor who has not proved debt before declaration of a dividend
- 73. Final dividend
- 74. No suit for dividend.
- 75. Power to allow insolvent to manage property, and allowance to insolvent for maintenance or service.
- 76. Right of insolvent to surplus

shall make regulations for the preservation and inspection of the wills so filed as aforesaid.*

82. After any grant of probate or letters of administration, no

Grantee of probate or administration alone to sue, &c., until same revoked. other than the person to whom the same shall have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, throughout the province in which the same may have been granted, until such probate or letters of administration shall have been recalled or revoked.

83. In any case before the District Judge in which there is

Procedure in contentious cases. contention, the proceedings† shall take, as nearly as may be, the form of a suit, according to the provisions of the Code of Civil Procedure,‡ in which the petitioner for a probate or letters of administration, as the case may be, shall be the plaintiff, and the person who may have appeared as aforesaid to oppose the grant shall be the defendant.

84. Where any probate is, or letters of administration are,

Payment to executor or administrator before probate or administration revoked. revoked, all payments *bond fide* made to any executor or administrator under such probate or administration before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same;

and the executor or administrator, who shall have acted under

Right of such executor or administrator to recoup himself. any such revoked probate or administration, may retain and reimburse himself out of the assets of the deceased in respect of any payments made by him which the person to whom probate or letters of administration shall be afterwards granted might have lawfully made.

85. Notwithstanding anything hereinbefore contained, it shall,

Power to refuse letters of administration. except in cases to which the Hindu Wills Act, 1870, applies,§ be in the discretion

* For rules made by the Chief Commissioner (now Lieutenant-Governor) of Burma, see Burma Rules Manual, Ed. 1897, p. 18.

† The word "proceedings" has been substituted for the word "proceeding" by the Repealing and Amending Act (XII. of 1891).

‡ See now Act XIV. of 1882.

§ The Hindu Wills Act (XXI. of 1870) applies to the Wills of Hindus, Jains, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the Towns of Madras and Bombay.

SECTIONS.

PART XII.

SUPPLEMENTAL.

- 115. Exemption from duty of transfers, etc., under this Act.
- 116. The Gazette to be evidence.
- 117. Swearing of affidavits.
- 118. Formal defect not to invalidate proceedings.
- 119. Application of Trustee Act to insolvency of trustee
- 120. Certain provisions to bind the Crown.
- 121. Saving for existing rights of audience.
- 122. Lapse and credit to Government of unclaimed dividends

SECTIONS.

- 123. Claims to moneys credited to Government under section 122.
- 124. Access to insolvent's books.
- 125. Fees and percentages.
- 126. Courts to be auxiliary to each other.
- 127. Repeal of enactments.

THE FIRST SCHEDULE—
MEETINGS OF CREDITORS.

THE SECOND SCHEDULE—
PROOF OF DEBTS.

THE THIRD SCHEDULE—
ENACTMENTS REPEALED.

90.* (1) An executor or administrator has, subject to the provisions of this section, power to dispose, as he thinks fit, of all or any of the property for the time being vested in him under section 4.

Power of executor or administrator to dispose of property.

(2) The power of an executor to dispose of immoveable property so vested in him is subject to any restriction which may be imposed in this behalf by the will appointing him, unless probate has been granted to him, and the Court which granted the probate permits him by an order in writing, notwithstanding the restriction, to dispose of any immoveable property specified in the order in a manner permitted by the order.

(3) An administrator may not, without the previous permission of the Court by which the letters of administration were granted,—

(a) mortgage, charge, or transfer by sale, gift, exchange, or otherwise any immoveable property for the time being vested in him under section 4, or

(b) lease any such property for a term exceeding five years.

(4) A disposal of property by an executor or administrator in contravention of sub-section (2) or sub-section (3), as the case may be, is voidable at the instance of any other person interested in the property.

(5) Before any probate or letters of administration is or are granted under this Act, there shall be endorsed thereon, or annexed thereto, a copy of sub-sections (1), (2), and (4), or of sub-sections (1), (3), and (4), as the case may be.

(6) A probate or letters of administration shall not be rendered invalid by reason of the endorsement or annexure required by the last-foregoing sub-section not having been made thereon or attached thereto, nor shall the absence of such an endorsement or annexure authorize an executor or administrator to act otherwise than in accordance with the provisions of this section.

91. If an executor or administrator purchases, either directly or indirectly, any part of the property of the deceased, the sale is voidable at the instance of any other person interested in the property sold.

Purchase by executor or administrator of deceased's property.

* This section was substituted for the original s. 90 by the Probate and Administration Act (VI. of 1889), s. 14. For validation of acts under grants of administration made before the commencement of Act VI. of 1889, see s. 19 of that Act.

PART I.

CONSTITUTION AND POWERS OF COURT.

Jurisdiction.

Courts having jurisdiction
in insolvency.

3. The Courts having jurisdiction
in insolvency under this Act shall be—

(a) the High Courts of Judicature at Fort William, Madras,
and Bombay, and

(b) the Chief Court of Lower Burma.

4. All matters in respect of which jurisdiction is given by
Jurisdiction to be exercised this Act shall be ordinarily transacted
by a single Judge. and disposed of by or under the direc-
tion of one of the Judges of the Court, and the Chief Justice or
Chief Judge shall, from time to time, assign a Judge for that
purpose.

5. Subject to the provisions of this Act and of rules, the Judge
Exercise of jurisdiction in of a Court exercising jurisdiction in
chambers. insolvency may exercise in chambers
the whole or any part of his jurisdiction.

6. (1) The Chief Justice or Chief Judge may, from time to
Delegation of powers to time, direct that, in any matters in
officers of Court. respect of which jurisdiction is given to
the Court by this Act, an officer of the Court appointed by him
in this behalf shall have all or any of the powers in this section
mentioned; and any order made or act done by such officer in
the exercise of the said powers shall be deemed the order or act
of the Court.

(2) The powers referred to in sub-section (1) are the following,
namely.—

(a) to hear insolvency petitions presented by debtors,
and to make orders of adjudication thereon,

(b) to hold the public examination of insolvents.

(c) to make any order, or exercise any jurisdiction, which is
prescribed as proper to be made or exercised in
chambers;

(d) to hear and determine any unopposed or *ex-parte*
application;

CHAPTER VII.

OF THE DUTIES OF AN EXECUTOR OR ADMINISTRATOR.*

97. It is the duty of an executor to provide funds for the performance of the necessary funeral ceremonies of the deceased in a manner suitable to his condition if he has left property sufficient for the purpose.

98.† (1) An executor or administrator shall, within six months from the grant of probate or letters of administration, or within such further time as the Court which granted the probate or letters may, from time to time, appoint, exhibit in that Court an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person to which the executor or administrator is entitled in that character, and shall, in like manner, within one year from the grant, or within such further time as the said Court may, from time to time, appoint, exhibit an account of the estate, showing the assets which have come to his hands, and the manner in which they have been applied or disposed of.

(2) The High Court may, from time to time, prescribe the form in which an inventory or account under this section is to be exhibited.

(3) If an executor or administrator, on being required by the Court to exhibit an inventory or account under this section, intentionally omits to comply with the requisition, he shall be deemed to have committed an offence under section 176 of the Indian Penal Code.

(4) The exhibition of an intentionally false inventory or account under this section shall be deemed to be an offence under section 193 of that Code.

* Compare Act X. of 1865, Pt. XXXIV., as amended by Act XIII. of 1875.

† This section has been substituted for the original s. 98 by the Probate and Administration Act (VI. of 1889), s. 15.

- (a) if, in British India or elsewhere, he makes a transfer of all, or substantially all, his property to a third person for the benefit of his creditors generally ;
- (b) if, in British India or elsewhere, he makes a transfer of his property or of any part thereof with intent to defeat or delay his creditors ;
- (c) if, in British India or elsewhere, he makes any transfer of his property or of any part thereof which would, under this or any other enactment for the time being in force, be void as a fraudulent preference if he were adjudged an insolvent ;
- (d) if, with intent to defeat or delay his creditors,—
 - (i) he departs or remains out of British India,
 - (ii) he departs from his dwelling-house or usual place of business, or otherwise absents himself,
 - (iii) he secludes himself so as to deprive his creditors of the means of communicating with him ;
- (e) if any of his property has been sold or attached for a period of not less than twenty-one days in execution of the decree of any Court for the payment of money ;
- (f) if he petitions to be adjudged an insolvent ;
- (g) if he gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts ;
- (h) if he is imprisoned in execution of the decree of any Court for the payment of money.

Explanation.—For the purposes of this section, the act of an agent may be the act of the principal, even though the agent have no specific authority to commit the act.

Order of Adjudication.

10. Subject to the conditions specified in this Act, if a debtor commits an act of insolvency, an insolvency petition may be presented either by a creditor or by the debtor, and the Court may, on such petition, make an order (hereinafter called an order of adjudication) adjudging him an insolvent.

But the executor or administrator shall pay all such debts as he knows of, including his own, equally and rateably, as far as the assets of the deceased will extend.

Debts to be paid before legacies.

105. Debts of every description must be paid before any legacy.

106. If the estate of the deceased is subject to any contingent liabilities, an executor or administrator is not bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due.

107. If the assets, after payment of debts, necessary expenses, and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions ;

and, in the absence of any direction to the contrary in the will, the executor has no right to pay one legatee in preference to another, nor to retain any money on account of a legacy to himself, or to any person for whom he is a trustee.

108. Where there is a specific legacy, and the assets are sufficient for the payments of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement.

109. Where there is a demonstrative legacy, and the assets are sufficient for the payment of debts and necessary expenses, the legatee has a preferential claim for payment of his legacy out of the fund from which the legacy is directed to be paid until such fund is exhausted, and if, after the fund is exhausted, part of the legacy still remains unpaid, he is entitled to rank for the remainder against the general assets as for a legacy of the amount of such unpaid remainder.

110. If the assets are not sufficient to answer the debts and specific legacies, an abatement shall be made from the latter rateably in proportion to their respective amounts.

for the benefit of the creditors in the event of the debtor being adjudged insolvent, or give an estimate of the value of the security. In the latter case, he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated in the same way as if he were an unsecured creditor.

13. (1) A creditor's petition shall be verified by affidavit of Proceedings and order on the creditor, or of some person on his creditor's petition. behalf having knowledge of the facts.

(2) At the hearing the Court shall require proof of—

(a) the debt of the petitioning creditor, and

(b) the act of insolvency or, if more than one act of insolvency is alleged in the petition, some one of the alleged acts of insolvency.

(3) The Court may adjourn the hearing of the petition, and order service thereof on the debtor.

(4) The Court shall dismiss the petition—

(a) if it is not satisfied with the proof of the facts referred to in sub-section (2); or

(b) if the debtor appears and satisfies the Court that he is able to pay his debts, or that he has not committed an act of insolvency, or that, for other sufficient cause, no order ought to be made.

(5) The Court may make an order of adjudication if it is satisfied with the proof above referred to, or if, on a hearing adjourned under sub-section (3), the debtor does not appear, and service of the petition on him is proved, unless, in its opinion, the petition ought to have been presented before some other Court having insolvency jurisdiction.

(6) Where the debtor appears on the petition, and denies that he is indebted to the petitioner, or that he is indebted to such an amount as would justify the petitioner in presenting a petition against him, the Court, on such security, if any, being given as the Court may require for payment to the petitioner of any debt which may be established against the debtor in due course of law, and of the costs of establishing the debt, may, instead of dismissing the petition, stay all proceedings on the petition for such time as may be required for trial of the question relating to the debt.

Illustrations.

(a) A horse is bequeathed. The executor requests the legatee to dispose of it or a third party proposes to purchase the horse from the executor, and he directs him to apply to the legatee. Assent to the legacy is implied.

(b) The interest of a fund is directed by the will to be applied for the maintenance of the legatee during his minority. The executor commences so to apply it. This is an assent to the whole of the bequest.

(c) A bequest is made of a fund to A, and after him to B. The executor pays the interest of the fund to A. This is an implied assent to the bequest to B.

(d) Executors die after paying all the debts of the testator, but before satisfaction of specific legacies. Assent to the legacies may be presumed.

(e) A person to whom a specific article has been bequeathed takes possession of it, and retains it without any objection on the part of the executor. His assent may be presumed.

114. The assent of an executor to a legacy may be conditional, and if the condition be one which he has a right to enforce, and it is not performed, there is no assent.

Illustrations.

(a) A bequeaths to B his lands of Sultanpur, which, at the date of the will, and at the death of A, were subject to a mortgage for 10,000 rupees. The executor assents to the bequest on condition that B shall, within a limited time, pay the amount due on the mortgage at the testator's death. The amount is not paid. There is no assent.

(b) The executor assents to a bequest on condition that the legatee shall pay him a sum of money. The payment is not made. The assent is nevertheless valid.

115. When the executor is a legatee, his assent to his own, Assent of executor to his legacy is necessary to complete his title to it in the same way as it is required when the bequest is to another person, and his assent may in like manner be express or implied.

Assent shall be implied if, in his manner of administering the property, he does any act which is referable to his character of legatee, and is not referable to his character of executor.

Implied assent.

Illustration

An executor takes the rent of a house or the interest of Government securities bequeathed to him, and applies it to his own use. This is assent.

17. On the making of an order of adjudication, the property of the insolvent, wherever situate, shall vest in the Official Assignee, and shall become divisible among his creditors, and thereafter, except as directed by this Act, no creditor to whom the insolvent is indebted in respect of any debt proveable in insolvency shall, during the pendency of the insolvency proceedings, have any remedy against the property of the insolvent in respect of the debt, or shall commence any suit or other legal proceeding except with the leave of the Court, and on such terms as the Court may impose :

Provided that this section shall not affect the power of any secured creditor to realize or otherwise deal with his security in the same manner as he would have been entitled to realize or deal with it if this section had not been passed.

18. (1) The Court may, at any time after the making of an order of adjudication, stay any suit or other proceeding pending against the insolvent before any Judge or Judges of the Court, or in any other Court subject to the superintendence of the Court.

(2) An order made under sub-section (1) may be served by sending a copy thereof, under the seal of the Court by post to the address for service of the plaintiff or other party prosecuting such suit or proceeding, and notice of such order shall be sent to the Court before which the suit or proceeding is pending.

(3) Any Court in which proceedings are pending against a debtor may, on proof that an order of adjudication has been made against him under this Act, either stay the proceedings or allow them to continue on such terms as it may think just.

19. (1) If in any case the Court, having regard to the nature of the debtor's estate or business, or to the interests of the creditors generally, is of opinion that a special manager of the estate or business ought to be appointed to assist the Official Assignee, the Court may appoint a manager thereof accordingly to act for such time as the Court may authorize, and to have such powers of the Official Assignee as may be entrusted to him by the Official Assignee or as the Court may direct.

(2) The special manager shall give security and furnish accounts in such manner as the Court may direct, and shall receive such remuneration as the Court may determine.

120. Where there is a direction that the first payment of an annuity shall be made within one month or any other division of time from the death of the testator, or on a day certain, the successive payments are to be made on the anniversary of the earliest day on which the will authorizes the first payment to be made ;

Date of successive payments when first payment directed to be made within given time or on day certain. on the anniversary of the first payment to be made ;

and, if the annuitant dies in the interval between the times of payment, an apportioned share of the annuity shall be paid to his representative.

Apportionment where annuitant dies between times of payment.

CHAPTER X.

OF THE INVESTMENT OF FUNDS TO PROVIDE FOR LEGACIES.*

121. Where a legacy, not being a specific legacy, is given for life, the sum bequeathed shall, at the end of the year, be invested in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct, and the proceeds thereof shall be paid to the legatee as the same shall accrue due.

Investment of sum bequeathed where legacy, not specific, given for life.

general rule to be made from time to time, authorize or direct, and the proceeds thereof shall be paid to the legatee as the same shall accrue due.

122. Where a general legacy is given to be paid at a future time, the executor shall invest a sum sufficient to meet it in securities of the kind mentioned in the last preceding section.

Investment of general legacy to be paid at future time.

The intermediate interest shall form part of the residue of the testator's estate.

Intermediate interest.

123. Where an annuity is given, and no fund is charged with its payment, or appropriated by the will to answer it, a Government annuity of the specified amount shall be purchased ; or

Procedure when no fund charged with, or appropriated to, annuity.

its payment, or appropriated by the will to answer it, a Government annuity of the specified amount shall be purchased ; or

* Compare Act X. of 1865, Pt. XXXVII., as amended by Act VI. of 1881. The provisions in Ch. X. as to an executor apply also to an administrator with the will annexed.—See s. 148, *infra*.

as aforesaid, the Court may, if it thinks fit, re-commit the debtor to his former custody, and the jailor or keeper of the prison to whose custody such debtor is so re-committed shall receive such debtor into his custody according to such re-commitment, and thereupon all processes which were in force against the person of such debtor at the time of such release as aforesaid shall be deemed to be still in force against him as if such order had not been made.

(3) Nounce of the order annulling an adjudication shall be published in the *Gazette of India*, and in the local official Gazette, and in such other manner as may be prescribed.

Proceedings consequent on Order of Adjudication.

24. (1) Where an order of adjudication is made against a debtor, he shall prepare and submit to the Court a schedule verified by affidavit, in such form, and containing such particulars of, and in relation to, his affairs as may be prescribed.

(2) The schedule shall be so submitted within the following times, namely :—

(a) if the order is made on the petition of the debtor, within thirty days from the date of the order,

(b) if the order is made on the petition of a creditor, within thirty days from the date of service of the order.

(3) If the insolvent fails, without reasonable excuse, to comply with the requirements of this section, the Court may, on the application of the Official Assignee or of any creditor, make an order for his committal to the civil prison.

(4) If the insolvent fails to prepare and submit any such schedule as aforesaid, the Official Assignee may, at the expense of the estate, cause such a schedule to be prepared in manner prescribed.

25. (1) Any insolvent, who shall have submitted his schedule as aforesaid, may apply to the Court for protection-order, and the Court may, on such application, make an order for the protection of the insolvent from arrest or detention.

(2) A protection-order may apply, either to all the debts mentioned in the schedule, or to any of them, as the Court may think

and such payment into the Court of the District Judge or into the Court of Wards, as the case may be, shall be a sufficient discharge for the money so paid;

and such money, when paid in, shall be invested in the purchase of Government securities, which, with the interest thereon, shall be transferred or paid to the person entitled thereto, or otherwise applied for his benefit, as the Judge or the Court of Wards, as the case may be, may direct.

CHAPTER XI.

OF THE PRODUCE AND INTEREST OF LEGACIES.*

128. The legatee of a specific legacy is entitled to the clear produce thereof, if any, from the testator's death.

Legatee's title to produce of specific legacy.

Exception.—A specific bequest, contingent in its terms, does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy.

The clear produce of it forms part of the residue of the testator's estate

Illustrations.

(a.) A bequeaths his flock of sheep to B. Between the death of A and delivery by his executor, the sheep are shorn, or some of the ewes produce lambs. The wool and lambs are the property of B.

(b.) A bequeaths his Government securities to B, but postpones the delivery of them till the death of C. The interest which falls due between the death of A and the death of C belongs to B, and must, unless he is a minor, be paid to him as it is received.

(c.) The testator bequeaths all his four per cent. Government promissory notes to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the notes, but the interest which accrues in respect of them, between the testator's death and A's completing 18, forms part of the residue.

129. The legatee under a general residuary bequest is entitled to the produce of the residuary fund from the testator's death.

Residuary legatee's title to produce of residuary fund.

Exception.—A general residuary bequest contingent in its terms does not comprise the income which may accrue upon the

* Compare Act X. of 1865, Pt. XXXVIII.

(4) The Official Assignee shall take part in the examination of the insolvent, and for the purpose thereof, subject to such directions as the Court may give, may be represented by a legal practitioner.

(5) The Court may put such questions to the insolvent as it may think expedient.

(6) The insolvent shall be examined upon oath, and it shall be his duty to answer all such questions as the Court may put or allow to be put to him. Such notes of the examination as the Court thinks proper shall be taken down in writing, and shall be read over either to or by the insolvent, and signed by him, and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor at all reasonable times.

(7) When the Court is of opinion that the affairs of the insolvent have been sufficiently investigated, it shall, by order, declare that his examination is concluded, but such order shall not preclude the Court from directing further examination of the insolvent whenever it may deem fit to do so.

(8) Where the insolvent is a lunatic, or suffers from any such mental or physical affliction or disability as, in the opinion of the Court, makes him unfit to attend his public examination, or is a woman who, according to the customs and manners of the country, ought not to be compelled to appear in public, the Court may make an order dispensing with such examination, or directing that the insolvent be examined on such terms, in such manner, and at such place, as to the Court seems expedient.

Composition and Schemes of Arrangement.

28. (1) An insolvent may, at any time after the making of an order of adjudication, submit a proposal for a composition in satisfaction of his debts, or a proposal for a scheme of arrangement of his affairs in the prescribed form, and such proposal shall be submitted by the Official Assignee to a meeting of creditors.

(2) The Official Assignee shall send to each creditor who is mentioned in the schedule, or who has tendered a proof before the meeting, a copy of the insolvent's proposals with a report thereon, and, if, on the consideration of such proposal, the majority in number and three-fourths in value of all the creditors whose debts are proved resolve to accept the proposal, the same shall be deemed to be duly accepted by the creditors.

133. No interest is payable on the arrears of an annuity within the first year from the death of the testator, although a period earlier than the expiration of that year may have been fixed by the will for making the first payment of the annuity.

134. Where a sum of money is directed to be invested to produce an annuity, interest is payable on it from the death of the testator.

CHAPTER XII.

OF THE REFUNDING OF LEGACIES.*

135. An executor who has paid a legacy under the order of a Judge is entitled to call upon the legatee to refund in the event of the assets proving insufficient to pay all the legacies.

136. When an executor has voluntarily paid a legacy, he cannot call upon a legatee to refund in the event of the assets proving insufficient to pay all the legacies.

137. When the time prescribed by the will for the performance of a condition has elapsed, without the condition having been performed, and the executor has thereupon, without fraud, distributed the assets, in such case, if further time has, under the second clause of this section, been allowed for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the executor, but those to whom he has paid it are liable to refund the amount.

Where the will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed, or as a condition upon the non-fulfilment of which the subject-matter of the bequest is to go over to another person, or the bequest is to cease to have effect, the act must be

* Compare Act X. of 1865, Pt XXXIX. The provisions in Ch XII. as to an executor apply also to an administrator with the will annexed — See s. 148, *infra*.

30. (1) If the Court approves the proposal, the terms shall be embodied in an order of the Court, and an order shall be made annulling the adjudication, and the provisions of section 23, sub-sections (1) and (3), shall thereupon apply, and the composition or scheme shall be binding on all the creditors so far as relates to any debt due to them from the insolvent and proveable in insolvency.

(2) The provisions of the composition or scheme may be enforced by the Court on application by any person interested, and any disobedience of an order of the Court made on the application shall be deemed a contempt of Court.

31. (1) If default is made in the payment of any instalment due in pursuance of any composition or scheme approved as aforesaid, or if it appears to the Court that the composition or scheme cannot proceed without injustice or undue delay, or that the approval of the Court was obtained by fraud, the Court may, if it thinks fit, on application by any person interested, re-adjudge the debtor insolvent, and annul the composition or scheme, and the property of the debtor shall thereupon vest in the Official Assignee, but without prejudice to the validity of any transfer or payment duly made, or of anything duly done, under or in pursuance of the composition or scheme.

(2) Where a debtor is re-adjudged insolvent under sub-section (1), all debts proveable in other respects which have been contracted before the date of such re-adjudication shall be proveable in the insolvency.

32. Notwithstanding the acceptance and approval of a composition or scheme, the composition or scheme shall not be binding on any creditor so far as regards a debt or liability from which, under the provisions of this Act, the insolvent would not be discharged by an order of discharge in insolvency unless the creditor assents to the composition or scheme.

Control over Person and Property of Insolvent.

33. (1) Every insolvent shall, unless prevented by sickness or other sufficient cause, attend any meeting of his creditors which the Official Assignee may require him to attend, and

Duties of insolvent as to discovery and realisation of property.

the assets have subsequently become deficient by the wasting of the executor.

142. If the assets were not sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy must, before he can call on a satisfied legatee to refund, first proceed against the executor, if he is solvent, but, if the executor is insolvent, or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.

143 The refunding of one legatee to another shall not exceed the sum by which the satisfied legatee to another. legacy ought to have been reduced if the estate had been properly administered.

Illustration.

A has bequeathed 240 rupees to B, 480 rupees to C, and 720 rupees to D. The assets are only 1,200 rupees, and, if properly administered, would give 200 rupees to B, 400 rupees to C, and 600 rupees to D. C and D have been paid their legacies in full, leaving nothing to B. B can oblige C to refund 80 rupees, and D to refund 120 rupees.

Refunding to be without interest.

144. The refunding shall in all cases be without interest.

145. The surplus or residue of the deceased's property, after payment of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the will.

145A.* Where a person not having his domicile in British India has died, leaving assets both in British India, and in the country in which he had his domicile at the time of his death, and there have been a grant of probate or letters of administration in British India with respect to the assets there and a grant of administration in the country of domicile with respect to the assets in that country, the executor or administrator, as the case may be, in British India, after having given such notices as are mentioned in section 139, and after

* S 145A has been inserted by the Probate and Administration Act (II. of 1890), s 16.

(a) if it appears to the Court that there is probable reason for believing that he has absconded or is about to abscond with a view of avoiding examination in respect of his affairs, or of otherwise avoiding, delaying, or embarrassing proceedings in insolvency against him; or

(b) if it appears to the Court that there is probable reason for believing that he is about to remove his property with a view of preventing or delaying possession being taken of it by the Official Assignee, or that there is probable reason for believing that he has concealed or is about to conceal or destroy any of his property or any books, documents, or writings which might be of use to his creditors in the course of his insolvency; or

(c) if he removes any property in his possession above the value of fifty rupees without the leave of the Official Assignee.

(2) No payment or composition made or security given after arrest made under this section shall be exempt from the provisions of this Act relating to fraudulent preferences.

35. Where the Official Assignee has been appointed *interim* receiver, or an order of adjudication is made, the Court, on the application of the Official Assignee, may, from time to time, order that, for such time, not exceeding three months, as the Court thinks fit, all post letters, whether registered or unregistered, parcels, and money orders addressed to the debtor at any place or places mentioned in the order for re-direction, shall be re-directed, or delivered by the Postal authorities in British India to the Official Assignee, or otherwise as the Court directs; and the same shall be done accordingly.

36. (1) The Court may, on the application of the Official Assignee, or of any creditor who has proved his debt, at any time after an order of adjudication has been made, summon before it, in such manner as may be prescribed, the insolvent or any person known or suspected to have in his possession any property belonging to the insolvent, or supposed to be indebted to the insolvent, or any person whom the Court may deem capable of giving information respecting the insolvent, his dealings, or property; and the

CHAPTER XIV.

MISCELLANEOUS.

148. In Chapters VIII, IX., X., and XII. of this Act, the Provisions applied to administrator with will annexed. provisions as to an executor shall apply also to an administrator with the will annexed.

149. Nothing herein contained shall—

- (a) validate any testamentary disposition which would otherwise have been invalid;
- (b) invalidate any such disposition which would otherwise have been valid;
- (c) deprive any person of any right of maintenance to which he would otherwise have been entitled; or
- (d) affect the rights, duties, and privileges of the Administrator-General of Bengal, Madras, or Bombay.*

150. No proceedings to obtain probate of a will or letters of administration to the estate of any Hindu, Muhammadan, Buddhist, or person exempted under section 332 of the Indian Succession Act, 1865,† shall be instituted in any Court in British India except under this Act.

151. [*Repeal of portions of Act XXVII. of 1860.*] *Repealed by the Succession Certificate Act (VII. of 1889).*

152. The grant of probate or letters of administration under this Act, in respect of any property, shall be deemed to supersede any certificate previously granted in respect of the same property under‡ Act No. XXVII. of 1860,§ or Bombay Regulation No. VIII. of 1827; and when, at the time of the grant of such probate or letters, any suit or other proceeding instituted by the holder of such

* See Act II. of 1874.

† Act X. of 1865.

‡ Here the words "the said," being repealed by the Repealing and Amending Act (XII. of 1891), have been omitted

§ Act XXVII. of 1860 has been repealed by the Succession Certificate Act (VII. of 1889), but see saving in s. 2 of the latter Act.

Discharge of Insolvent.

38. (1) An insolvent may, at any time after the order of adjudication, apply to the Court for an order of discharge, and the Court shall appoint a day for hearing the application, but, save where the public examination of the insolvent has been dispensed with under the provisions of this Act, the application shall not be heard until after such examination has been concluded. The application shall be heard in open Court.

(2) On the hearing of the application, the Court shall take into consideration any report of the Official Assignee as to the insolvent's conduct and affairs, and, subject to the provisions of section 39, may—

- (a) grant or refuse an absolute order of discharge, or
- (b) suspend the operation of the order for a specified time, or
- (c) grant an order of discharge subject to any conditions with respect to any earnings or income which may afterwards become due to the insolvent, or with respect to his after-acquired property.

39. (1) The Court shall refuse the discharge in all cases where the insolvent has committed any offence under this Act, or under sections 421 to 424 of the Indian Penal Code,* and shall, on proof of any of the facts hereinafter mentioned, either—

- (a) refuse the discharge; or
- (b) suspend the discharge for a specified time; or
- (c) suspend the discharge until a dividend of not less than four annas in the rupee has been paid to the creditors;
- (d) require the insolvent as a condition of his discharge to consent to a decree being passed against him in favour of the Official Assignee for any balance or part of any balance of the debts proveable under the insolvency which is not satisfied at the date of his discharge; such balance or part of any balance of the debts to be paid out of the future earnings

* Act XLV. of 1860

157.* (1) When a grant of probate or letters of administration is revoked or annulled under this Act, the person to whom the grant was made shall forthwith deliver up the probate or letters to the Court which made the grant.

(2) If such person wilfully, and without sufficient cause, omits so to deliver up the probate or letters, he shall be punished with fine which may extend to one thousand rupees, or with imprisonment which may extend to three months, or with both.

* S. 157 has been added by the Probate and Administration Act (VI. of 1889), s. 17.

(i) that the insolvent has, within three months preceding the date of the presentation of the petition, when unable to pay his debts as they become due, given an undue preference to any of his creditors;

(j) that the insolvent has concealed or removed his books or his property or any part thereof, or has been guilty of any other fraud or fraudulent breach of trust.

(3) The power of suspending and of attaching conditions to an insolvent's discharge may be exercised concurrently.

(4) On any application for discharge, the report of the Official Assignee shall be *prima-facie* evidence, and the Court may presume the correctness of any statement contained therein.

40. Notice of the appointment by the Court of the day for hearing of application for discharge shall be published in the prescribed manner, and sent one month at least before the day so appointed to each creditor who has proved, and the Court may hear the Official Assignee, and may also hear any creditor. At the hearing the Court may put such questions to the insolvent and receive such evidence as it may think fit.

41. If an insolvent does not appear on the day so appointed for hearing his application for discharge, or if an insolvent shall not apply to the Court for an order of discharge within such time as may be prescribed, the Court, on the application of the Official Assignee or of a creditor, or of its own motion, may annul the adjudication, or make such other order as it may think fit, and the provisions of section 23 shall apply on such annulment.

42. (1) Where the Court refuses the discharge of the insolvent, it may, after such time and in such circumstances as may be prescribed, permit him to renew his application.

(2) Where an order of discharge is made subject to conditions, and, at any time after the expiration of two years from the date of the order, the insolvent shall satisfy the Court that there is no reasonable probability of his being in a position to comply with the terms of such order, the Court may modify the terms of the

THE PROVINCIAL INSOLVENCY ACT 1907

(Act No. III. of 1907).

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- (c) any debt or liability in respect of which he has obtained forbearance by any fraud to which he was a party; or
- (d) any liability under an order for maintenance made under section 488 of the Code of Criminal Procedure, 1898.*
- (2) Save as otherwise provided by sub-section (1), an order of discharge shall release the insolvent from all debts proveable in insolvency.
- (3) An order of discharge shall be conclusive evidence of the insolvency, and of the validity of the proceedings therein.
- (4) An order of discharge shall not release any person who, at the date of the presentation of the petition, was a partner or co-trustee with the insolvent, or was jointly bound, or had made any joint contract with him, or any person who was surety, or in the nature of a surety, for him.

PART III.

ADMINISTRATION OF PROPERTY.

Proof of Debts.

46. (1) Demands in the nature of unliquidated damages arising otherwise than by reason of a contract or breach of trust shall not be proveable in insolvency.

(2) A person having notice of the presentation of any insolvency petition by or against the debtor shall not prove for any debt or liability contracted by the debtor subsequently to the date of his so having notice.

(3) Save as provided by sub-sections (1) and (2), all debts and liabilities, present or future, certain or contingent, to which the debtor is subject when he is adjudged an insolvent, or to which he may become subject before his discharge by reason of any obligation incurred before the date of such adjudication, shall be deemed to be debts proveable in insolvency.

(4) An estimate shall be made by the Official Assignee of the value of any debt or liability proveable as aforesaid which, by

* Act V. of 1898.

THE
PROVINCIAL INSOLVENCY
(Act No. III. of 1907)

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL

Received His Excellency's Assent on the 15th March 1907.

An Act to consolidate and amend the Law relating to Insolvency in British India, as administered by Courts having jurisdiction outside the Presidency-towns and the Town of Rangoon.

WHEREAS it is expedient to consolidate and amend the law relating to insolvency in British India as administered by Courts having jurisdiction outside the Presidency-towns and the Town of Rangoon ; It is hereby enacted as follows :—

Short title, extent, and commencement.

1. (1) This Act may be called the Provincial Insolvency Act, 1907:

(2) It extends to the whole of British India except the Scheduled Districts : and

(3) It shall come into force on the first day of January 1908.

Definitions.

2. (1) In this Act, unless there is anything repugnant in the subject or context,—

(a) "available act of insolvency" means any act of insolvency available for an insolvency-petition at the date of the presentation of the petition on which the order of adjudication is made :

(b) creditor "includes a decree-holder, "debt" includes a judgment-debt, and "debtor" includes a judgment-debtor :

(c) "District Court" means the principal Civil Court of original jurisdiction in any area outside the local limits for the time being of the Presidency-towns, and of the Town of Rangoon :

(d) "prescribed" means prescribed by rules made under this Act :

- (a) all debts due to the Crown or to any local authority;
- (b) all salary or wages of any clerk, servant, or labourer in respect of services rendered to the insolvent during four months before the date of the presentation of the petition, not exceeding three hundred rupees for each such clerk, and one hundred rupees for each such servant or labourer, and
- (c) rent due to a landlord from the insolvent: provided the amount payable under this clause shall not exceed one month's rent.

(2) The debts specified in sub-section (1) shall rank equally between themselves, and shall be paid in full, unless the property of the insolvent is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(3) Subject to the retention of such sums as may be necessary for the expenses of administration or otherwise, the debts specified in sub-section (1) shall be discharged forthwith in so far as the property of the insolvent is sufficient to meet them.

(4) In the case of partners, the partnership-property shall be applicable in the first instance in payment of the partnership-debts and the separate property of each partner shall be applicable in the first instance in payment of his separate debts. Where there is a surplus of the separate property of the partners, it shall be dealt with as part of the partnership-property; and where there is a surplus of the partnership-property, it shall be dealt with as part of the respective separate property in proportion to the rights and interests of each partner in the partnership property.

(5) Subject to the provisions of this Act, all debts proved in insolvency shall be paid rateably according to the amounts of such debts respectively and without any preference.

(6) Where there is any surplus after payment of the foregoing debts, it shall be applied in payment of interest from the date on which the debtor is adjudged an insolvent at the rate of six per centum per annum on all debts proved in the insolvency

50. After an order of adjudication has been made, no distress for rent due before such order shall be made upon the goods or effects of the insolvent, unless the order be annulled, but the landlord or party to whom the rent may be due shall be entitled to prove in respect of such rent.

- (d) if, with intent to defeat or delay his creditors,—
 - (i) he departs or remains out of British India,
 - (ii) he departs from his dwelling-house or usual place of business, or otherwise absents himself,
 - (iii) he secludes himself so as to deprive his creditors of the means of communicating with him;
- (e) if any of his property has been sold in execution of the decree of any Court for the payment of money;
- (f) if he petitions to be adjudged as insolvent under the provisions of this Act;
- (g) if he gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts;
- (h) if he is imprisoned in execution of the decree of any Court for the payment of money.

Explanation.—For the purposes of this section, the act of an agent may be the act of the principal.

5. Subject to the conditions specified in this Act, if a debtor commits an act of insolvency, an insolvency-petition may be presented, either by a creditor or by the debtor, and the Court may, on such petition, make an order (hereinafter called an order of adjudication) adjudging him an insolvent.

Explanation.—The presentation of a petition by the debtor shall be deemed an act of insolvency within the meaning of this section, and, on such petition, the Court may make an order of adjudication.

6. (1) Every insolvency-petition shall be in writing, and shall be signed and verified in the manner prescribed by the Code of Civil Procedure* for signing and verifying plaints, and the procedure laid down by the said Code with respect to the admission of plaints shall, so far as it is applicable, be followed in the case of such petitions.

(2) Every insolvency-petition shall be presented to a Court having jurisdiction under this Act in any local area in which the debtor ordinarily resides or carries on business, or personally works.

* Act V. of 1908.

- (c) all goods, being, at the commencement of the insolvency, in the possession, order, or disposition of the insolvent, in his trade or business by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof :

Provided that things in action other than debts due or growing due to the insolvent in the course of his trade or business shall not be deemed goods within the meaning of clause (c)

Provided also that the true owner of any goods which have become divisible among the creditors of the insolvent under the provisions of clause (c) may prove for the value of such goods.

Effect of Insolvency on Antecedent Transactions.

53. (1) Where execution of a decree has issued against the property of a debtor, no person shall be entitled to the benefit of the execution against the Official Assignee, except in respect of assets realized in the course of the execution by sale or otherwise before the date of the order of adjudication, and before he had notice of the presentation of any insolvency petition by or against the debtor.

(2) Nothing in this section shall affect the right of a secured creditor in respect of property against which a decree is executed.

(3) A person who, in good faith, purchases the property of a debtor under a sale in execution shall in all cases acquire a good title to it against the Official Assignee.

54. Where execution of a decree has issued against any property of a debtor which is saleable in execution, and, before the sale thereof, notice is given to the Court executing the decree that an order of adjudication has been made against the debtor, the Court shall, on application, direct the property, if in the possession of the Court, to be delivered to the Official Assignee, but the costs of the execution shall be a first charge on the property so delivered, and the Official Assignee may sell the property or an adequate part thereof for the purpose of satisfying the charge.

55. Any transfer of property, not being a transfer made before and in consideration of marriage, or made in favour of a purchaser or incumbrancer in good faith, and for valuable consideration, shall, if the

joint debtors, the Court may consolidate the proceedings or any of them on such terms as the Court thinks fit.

9. Where the petitioner does not proceed with due diligence

Power to charge carriage on his petition, the Court may substitute of proceedings. as petitioner any other creditor to whom the debtor may be indebted in the amount required by this Act in the case of a petitioning creditor.

10. If a debtor, by or against whom an insolvency-petition has

Continuance of proceedings on death of debtor. been presented, dies, the proceedings in the matter shall, unless the Court otherwise orders, be continued as if he were alive.

11. (1) Every insolvency-petition presented by a debtor

Contents of petition. shall contain the following particulars, namely—

- (a) a statement that the debtor is unable to pay his debts ;
- (b) the place where he ordinarily resides or carries on business, or personally works for gain, or, if he has been arrested or imprisoned, the place where he is in custody ;
- (c) the Court (if any) by whose order he has been arrested or imprisoned, or by which an order has been made for the attachment of his property, together with particulars of the decree in respect of which any such order has been made ;
- (d) the amount and particulars of all pecuniary claims against him, together with the names and residences of his creditors, so far as they are known to, or can, by the exercise of reasonable care and diligence, be ascertained by, him ;
- (e) the amount and particulars of all his property, together with—
 - (i) a specification of the value of all such property not consisting of money ;
 - (ii) the place or places at which any such property is to be found ; and

property appointed under the Code of Civil Procedure, 1908,* and the Court may, on his application, enforce such acquisition or retention accordingly.

(3) Where any part of the property of the insolvent consists of stock, shares in ships, shares, or any other property transferable in the books of any company, office, or person, the Official Assignee may exercise the right to transfer the property to the same extent as the insolvent might have exercised it if he had not become insolvent.

(4) Where any part of the property of the insolvent consists of things in action, such things shall be deemed to have been duly transferred to the Official Assignee.

(5) Any treasurer or other officer, or any banker, attorney, or agent of an insolvent, shall pay and deliver to the Official Assignee all money and securities in his possession or power as such officer, banker, attorney, or agent, which he is not by law entitled to retain as against the insolvent or the Official Assignee. If he fails so to do, he shall be guilty of a contempt of Court, and shall be punishable accordingly on the application of the Official Assignee.

59. (1) The Court may grant a warrant to any prescribed

Seizure of property of in- officer of the Court or any police-officer
solvent. above the rank of a constable to seize

any part of the property of an insolvent in the custody or possession of the insolvent, or of any other person, and, with a view to such seizure, to break open any house, building, or room of the insolvent where the insolvent is supposed to be, or any building or receptacle of the insolvent where any of his property is supposed to be

(2) Where the Court is satisfied that there is reason to believe that property of the insolvent is concealed in a house or place not belonging to him, the Court may, if it thinks fit, grant a search-warrant to any such officer as aforesaid, who may execute it according to its tenor.

60. (1) Where an insolvent is an officer of the Army or Navy,

Appropriation of portion of or of His Majesty's Royal Indian Marine
pay or other income to cre- Service, or an officer or clerk or otherwise
ditors. employed or engaged in the civil service

of the Crown, the Official Assignee shall receive for distribution amongst the creditors so much of the insolvent's pay or salary liable to attachment in execution of a decree as the Court may direct.

* Act V. of 1908.

by the Code of Civil Procedure,* or by any other enactment for the time being in force, from liability to attachment and sale in execution of a decree,

- (4) order a warrant to issue, with or without bail for the arrest of the debtor, and direct either that he be detained in the civil prison until the disposal of the petition, or that he be released on such terms as to security as may be reasonable and necessary:

Provided that an order under clause (2), clause (3), or clause (4) shall not be made unless the Court is satisfied that the debtor, with intent to defeat or delay his creditors, or to avoid any process of the Court,—

- (1) has absconded or has departed from the local limits of the jurisdiction of the Court, or is about to abscond or to depart from such limits, or is remaining outside them, or
- (2) has failed to disclose, or has concealed, destroyed, transferred, or removed from such limits, or is about to conceal, destroy, transfer, or remove from such limits, any documents likely to be of use to his creditors in the course of the hearing, or any part of his property other than such particulars as aforesaid.

14 (1) On the day fixed for the hearing of the petition, or on any subsequent day to which the hearing Procedure at hearing. may be adjourned, the Court shall require proof—

- (a) that the creditor or the debtor, as the case may be, is entitled to present the petition,
- (b) that the debtor, if he does not appear on a petition presented by a creditor, has been served with notice of the order referred to in section 12, sub-section (1), and
- (c) that the debtor has committed the act of insolvency alleged against him.
- (2) The Court shall also examine the debtor, if he is present, as to his conduct, dealings, and property in the presence of such creditors as appear at the hearing, and the creditors shall have the right to question the debtor thereon.

* Act V of 1908

without the leave of the Court; and the Court may, before or on granting such leave require such notice to be given to persons interested, and impose such terms as a condition of granting leave, and make such orders with respect to fixtures, tenant's improvements, and other matters arising out of the tenancy, as the Court thinks just.

64. The Official Assignee shall not be entitled to disclaim

Power to call on Official Assignee to disclaim. any property in pursuance of section 62 in any case where an application in writing has been made to the Official Assignee by any person interested in the property requiring him to decide whether he will disclaim, and the Official Assignee has, for a period of twenty-eight days after the receipt of the application, or such extended period as may be allowed by the Court, declined or neglected to give notice that he disclaims the property, and, in the case of a contract, if the Official Assignee, after such application as aforesaid, does not, within the said period or extended period, disclaim the contract, he shall be deemed to have adopted it.

65. The Court may, on the application of any person who

Power for Court to rescind contract. is, as against the Official Assignee, entitled to the benefit, or, subject to the burden of a contract made with the insolvent, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract or otherwise as to the Court may seem equitable, and any damages payable under the order to any such person may be proved by him as a debt under the insolvency.

66. (1) The Court may, on the application of any person

Power for Court to make vesting order in respect of disclaimed property. either claiming any interest in any disclaimed property, or under any liability not discharged by this Act in respect of any disclaimed property, and on hearing such persons as it thinks fit, make an order for the vesting of the property in, or delivery thereof to, any person entitled thereto, or to whom it may seem just that the same should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Court thinks just; and, on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any transfer for the purpose:

Provided, always, that, where the property disclaimed is of a leasehold nature, the Court shall not make a vesting order in

(b) the insolvent, if in prison for debt, shall be released;

and thereafter, except as provided by this Act, no creditor to whom the insolvent is indebted in respect of any debt provable under this Act shall, during the pendency of the insolvency proceedings, have any remedy against the property or person of the insolvent in respect of the debt, or commence any suit or other legal proceeding, except with the leave of the Court, and on such terms as the Court may impose.

(3) For the purposes of sub-section (2), clause (a), all goods being, at the date of the presentation of the petition on which the order is made, in the possession, order, or disposition of the insolvent in his trade or business, by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof, shall be deemed to be the property of the insolvent.

(4) All such property as may be acquired by, or devolve on, the insolvent after the date of an order of adjudication, and before his discharge, shall forthwith vest in the Court or receiver, and become divisible among the creditors in accordance with the provisions of sub section (2), clause (a).

(5) Nothing in this section shall affect the power of any secured creditor to realize or otherwise deal with his security in the same manner as he would have been entitled to realize or deal with it if this section had not been passed.

(6) An order of adjudication shall relate back to, and take effect from, the date of the presentation of the petition on which it is made.

(7) Notice of an order of adjudication stating the name, address, and description of the insolvent, the date of the adjudication, and the Court by which the adjudication is made, shall be published in the local official Gazette, and in such other manner as may be prescribed.

17. If, in any case in which an order of adjudication has been made, it shall be proved to the Court by which such order was made that insolvency proceedings are pending in another Court against the same debtor, and that the property of the debtor can be more conveniently distributed by such other Court, the Court may rescind the order of adjudication, and stay all proceedings, or dismiss the petition on such terms (if any) as the Court thinks fit.

- (e) employ a legal practitioner or other agent to take any proceedings or do any business which may be sanctioned by the Court;
 - (f) accept, as the consideration for the sale of any property of the insolvent, a sum of money payable at a future time, or fully-paid shares, debentures, or debenture-stock in any limited company subject to such stipulations as to security and otherwise as the Court thinks fit;
 - (g) mortgage or pledge any part of the property of the insolvent for the purpose of raising money for the payment of his debts, or for the purpose of carrying on the business;
 - (h) refer any dispute to arbitration, and compromise all debts, claims, and liabilities on such terms as may be agreed upon;
 - (i) divide in its existing form amongst the creditors, according to its estimated value, any property which, from its peculiar nature or other special circumstances, cannot readily or advantageously be sold.
- (2) The Official Assignee shall account to the Court and pay over all moneys, and deal with all securities, in such manner as is prescribed, or as the Court directs.

Distribution of Property.

69. (1) The Official Assignee shall, with all convenient speed, declare and distribute dividends amongst the creditors who have proved their debts.

(2) The first dividend (if any) shall be declared and be distributed within six months after the adjudication, unless the Official Assignee satisfies the Court that there is sufficient reason for postponing the declaration to a later date.

(3) Subsequent dividends shall, in the absence of sufficient reason to the contrary, be declared and be payable at intervals of not more than six months.

(4) Before declaring a dividend, the Official Assignee shall cause notice of his intention to do so to be published in the prescribed manner, and shall also send reasonable notice thereof to each creditor mentioned in the insolvent's schedule who has not proved his debt.

(3) Any sum payable under section 18, sub-section (2), clause (b), in respect of the services of an Official Receiver, shall be credited to such fund as the Local Government may direct.

(4) Every Official Receiver shall receive such remuneration out of the said fund or otherwise as the Local Government may fix in this behalf, and no remuneration whatever beyond that so fixed shall be received by the Official Receiver as such.

20. Subject to the provisions of this Act the receiver shall, with Duties and powers of receiver, all convenient speed, realize the property of the debtor, and distribute dividends among the creditors entitled thereto, and for that purpose may—

(a) sell all or any part of the property of the insolvent ;

(b) give receipts for any money received by him ;

and may, by leave of the Court, do all or any of the following things, namely—

(c) carry on the business of the insolvent so far as may be necessary for the beneficial winding-up of the same ;

(d) institute, defend, or continue any suit or other legal proceeding relating to the property of the insolvent ;

(e) employ a pleader or other agent to take any proceedings, or do any business, which may be sanctioned by the Court ;

(f) accept, as the consideration for the sale of any property of the insolvent, a sum of money payable at a future time subject to such stipulations as to security and otherwise as the Court thinks fit ;

(g) mortgage or pledge any part of the property of the insolvent for the purpose of raising money for the payment of his debts ;

(h) refer any dispute to arbitration, and compromise all debts, claims, and liabilities, on such terms as may be agreed upon ;

(i) divide in its existing form amongst the creditors, according to its estimated value, any property which, from its peculiar nature or other special circumstances, cannot readily or advantageously be sold.

veney, he shall, with the leave of the Court, declare a final dividend; but, before so doing, he shall give notice in manner prescribed to the persons whose claims to be creditors have been notified to him, but not proved, that, if they do not prove their claims to the satisfaction of the Court, within the time limited by the notice, he will proceed to make a final dividend without regard to their claims.

(2) After the expiration of the time so limited, or, if the Court, on application by any such claimant, grants him further time for establishing his claim, then, on the expiration of that further time, the property of the insolvent shall be divided among the creditors who have proved their debts without regard to the claims of any other persons.

74. No suit for a dividend shall lie against the Official Assignee, but, where the Official Assignee refuses to pay any dividend, the Court may, on the application of the creditor who is aggrieved by such refusal, order him to pay it, and also to pay out of his own money, interest thereon at such rate as may be prescribed for the time that it is withheld, and the costs of the application.

75. (1) Subject to such conditions and limitations as may be prescribed, the Official Assignee may appoint the insolvent himself to superintend the management of the property of the insolvent or of any part thereof, or to carry on the trade (if any) of the insolvent, for the benefit of his creditors, and in any other respect to aid in administering the property in such manner and on such terms as the Official Assignee may direct.

(2) Subject as aforesaid, the Court may, from time to time, make such allowance as it thinks just to the insolvent out of his property, for the support of the insolvent and his family, or in consideration of his services, if he is engaged in winding up his estate, but any such allowance may at any time be varied or determined by the Court.

76. The insolvent shall be entitled to any surplus remaining after payment in full of his creditors' debts, with interest, as provided by this Act, and of the expenses of the proceedings taken thereunder.

23. Where no receiver is appointed, the Court shall have all the rights of, and may exercise all the powers conferred on, a receiver under this Act.

Powers of Court if no receiver appointed.

24. (1) All persons alleging themselves to be creditors of the insolvent in respect of debts provable under this Act shall tender proof of their respective debts by producing evidence of the amount and particulars thereof, and the Court shall, by order, determine the persons who have proved themselves to be creditors of the insolvent in respect of such debts, and the amount of such debts respectively, and shall frame a schedule of such persons and debts :

Schedule of creditors.

Provided that, if, in the opinion of the Court, the value of any debt is incapable of being fairly estimated, the Court may make an order to that effect, and thereupon the debt shall not be included in the schedule.

(2) A copy of every such schedule shall be posted in the Court-house.

(3) Any creditor of the insolvent may, at any time before the discharge of the insolvent, tender proof of his debt, and apply to the Court for an order directing his name to be entered in the schedule as a creditor in respect of any debt provable under this Act, and not entered in the schedule, and the Court, after causing notice to be served on the insolvent and the other creditors, and, hearing their objections (if any), shall comply with or reject the application.

25. (1) A debt may be proved under this Act by delivering, or sending by post in a registered letter, to the Court, an affidavit verifying the debt.

Mode of proof.

(2) The affidavit shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers (if any) by which the same can be substantiated. The Court may at any time call for the production of the vouchers.

26. (1) Where the receiver thinks that a debt has been improperly entered in the schedule, the Court may, on the application of the receiver, and after notice to the creditor, and such inquiry (if any) as the Court thinks necessary, expunge such entry, or reduce the amount of the debt.

Disallowance and reduction of entries in schedule.

an offence under this Act, or under sections 421 to 424 of the Indian Penal Code* in connection with his insolvency, or which would justify the Court in refusing, suspending, or qualifying an order for his discharge ;

(d) to make such other reports concerning the conduct of the insolvent as the Court may direct, or as may be prescribed ; and

(e) to take such part and give such assistance in relation to the prosecution of any fraudulent insolvent as the Court may direct, or as may be prescribed.

80. The Official Assignee shall, whenever required by any creditor so to do, and on payment by the creditor of the prescribed fee, furnish a list of the creditors, showing in the list the amount of the debt due to each of the creditors.

Remuneration.

81. (1) Such remuneration shall be paid to the Official Assignee as may be prescribed.

(2) No remuneration whatever beyond that referred to in subsection (1) shall be received by an Official Assignee as such.

82. The Court shall call the Official Assignee to account for any misfeasance, neglect, or omission which may appear in his accounts or otherwise, and may require the Official Assignee to make good any loss which the estate of the insolvent may have sustained by reason of the misfeasance, neglect, or omission.

83. The Official Assignee may sue and be sued by the name of " the Official Assignee of the property of , an insolvent," inserting the name of the insolvent, and by that name may hold property of every description, make contracts, enter into any engagements binding on himself and his successors in office, and do all other acts necessary or expedient to be done in the execution of his office.

84. If an order of adjudication is made against an Official Assignee, he shall thereby vacate the office vacated by insolvency.

* Act XLV. of 1860.

(8) If default is made in the payment of any instalment due in pursuance of the composition or scheme, or if it appears to the Court that the composition or scheme cannot proceed without injustice or undue delay, or that the approval of the Court was obtained by fraud, the Court may, if it thinks fit, adjudge the debtor insolvent, and annul the composition or scheme, but without prejudice to the validity of any transfer or payment duly made, or of anything duly done under or in pursuance of the composition or scheme. When a debtor is adjudged insolvent under this sub-section, all debts provable in other respects which have been contracted before the date of such adjudication shall be provable in the insolvency.

(9) No composition or scheme shall be approved by the Court which does not provide for the payment, in priority to other debts, of all debts directed to be so paid in the distribution of the property of an insolvent.

28. (1) Save as provided by sub-section (2), all debts and liabilities, present or future, certain or contingent, to which the debtor is subject when he is adjudged an insolvent, or to which he may become subject before his discharge by reason of any obligation incurred before the date of such adjudication, shall be deemed to be debts provable under this Act.

(2) Demands in the nature of unliquidated damages arising otherwise than by reason of a contract or breach of trust shall not be provable under this Act.

29. A creditor may prove for a debt not payable when the debtor is adjudged an insolvent as if it were payable presently, and may receive dividends equally with the other creditors, deducting therefrom only a rebate of interest, at the rate of six per centum per annum computed from the declaration of a dividend to the time when the debt would have become payable, according to the terms on which it was contracted.

30. Where there have been mutual dealings between an insolvent and a creditor proving or claiming to prove a debt under this Act, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off against any sum due from the other.

PART V.

COMMITTEE OF INSPECTION.

88. The Court may, if it so thinks fit, authorize the creditors who have proved to appoint from among the creditors or holders of general proxies or general powers-of-attorney from such creditors, a Committee of Inspection for the purpose of superintending the administration of the insolvent's property by the Official Assignee.

Provided that a creditor who is appointed a member of a Committee of Inspection shall not be qualified to act until he has proved.

Control of Committee of Inspection over Official Assignee.

89. The Committee shall have such powers of control over the proceedings of the Official Assignee as may be prescribed

PART VI.

PROCEDURE

90. (1) In proceedings under this Act, the Court shall have the like powers, and follow the like procedure, as it has and follows in the exercise of its ordinary original civil jurisdiction:

Provided that nothing in this sub-section shall in any way limit the jurisdiction conferred on the Court under this Act

(2) Subject to the provisions of this Act and rules, the costs of and incidental to any proceeding in the Court shall be in the discretion of the Court.

(3) The Court may at any time adjourn any proceedings before it upon such terms, if any, as it thinks fit to impose.

(4) The Court may at any time amend any written process or proceeding under this Act upon such terms, if any, as it thinks fit to impose.

(5) Where, by this Act or by rules, the time for doing any act (or thing) is limited, the Court may extend the time either before or after the expiration thereof upon such terms, if any, as the Court thinks fit to impose.

(2) Where a debt which has been proved under this Act includes interest or any pecuniary consideration in lieu of interest, the interest or consideration shall, for the purposes of dividend, be calculated at a rate not exceeding six per centum per annum, without prejudice to the right of a creditor to receive out of the debtor's estate any higher rate of interest to which he may be entitled after all the debts proved have been paid in full.

· Priority of debts.

33. (1) In the distribution of the property of the insolvent, there shall be paid in priority to all other debts—

- (a) all debts due to the Crown or to any local authority ; and
- (b) all salary or wages, not exceeding twenty rupees in all, of any clerk, servant, or labourer in respect of services rendered to the insolvent during four months before the date of the presentation of the petition.

(2) The debts specified in sub-section (1) shall rank equally between themselves, and shall be paid in full, unless the property of the insolvent is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(3) Subject to the retention of such sums as may be necessary for the expenses of administration or otherwise, the debts specified in sub-section (1) shall be discharged forthwith in so far as the property of the insolvent is sufficient to meet them.

(4) In the case of partners, the partnership-property shall be applicable in the first instance in payment of the partnership-debts, and the separate property of each partner shall be applicable in the first instance in payment of his separate debts. Where there is a surplus of the separate property of the partners, it shall be dealt with as part of the partnership-property ; and, where there is a surplus of the partnership-property, it shall be dealt with as part of the respective separate property in proportion to the rights and interests of each partner in the partnership-property.

(5) Subject to the provisions of this Act, all debts entered in the schedule shall be paid rateably according to the amounts of such debts respectively, and without any preference.

(6) Where there is any surplus after payment of the foregoing debts, it shall be applied in payment of interest from the date on which the debtor is adjudged an insolvent at the rate of six per centum per annum on all debts entered in the schedule.

96. Where there are more respondents than one to a petition, the Court may dismiss the petition as to one or more of them without prejudice to the effect of the petition as against the other or others of them.

Power to dismiss petition against some respondents only.

97. Where an order of adjudication has been made on an insolvency petition against or by one partner in a firm, any other insolvency petition against or by a partner in the same firm shall be presented in or transferred to the Court in which the first-mentioned petition is in course of prosecution; and such Court may give such directions for consolidating the proceedings under the petitions as it thinks just.

Separate insolvency petitions against partners.

98. (1) Where a partner in a firm is adjudged insolvent, the Court may authorize the Official Assignee to continue or commence and carry on any suit or other proceeding in his name and that of the insolvent's partner; and any release by the partner of the debt or demand to which the proceeding relates shall be void.

Suits by Official Assignee and insolvent's partners.

(2) Where application for authority to continue or commence any suit or other proceeding has been made under sub-section (1), notice of the application shall be given to the insolvent's partner, and he may show cause against it, and, on his application, the Court may, if it thinks fit, direct that he shall receive his proper share of the proceeds of the proceeding, and, if he does not claim any benefit therefrom, he shall be indemnified against costs in respect thereof as the Court directs.

99. (1) Any two or more persons being partners, or any person carrying on business under a partnership-name, may take proceedings, or be proceeded against under this Act in the name of the firm:

Proceedings in partnership-name.

Provided that, in that case, the Court may, on application by any person interested, order the names of the persons who are partners in the firm, or the name of the person carrying on business under a partnership-name, to be disclosed in such manner, and verified on oath or otherwise, as the Court may direct.

(2) In the case of a firm in which one partner is an infant, an adjudication order may be made against the firm other than the infant partner.

(2) This section shall not affect the rights of any person who, in good faith and for valuable consideration, has acquired a title through or under a creditor of the insolvent.

38. Subject to the foregoing provisions of this Act, with respect to the effect of insolvency on an execution, and with respect to the avoidance of certain transfers and preferences, nothing in this Act shall invalidate, in the case of an insolvency,—

- (a) any payment by the insolvent to any of his creditors;
- (b) any payment or delivery to the insolvent;
- (c) any transfer by the insolvent for valuable consideration; or
- (d) any contract or dealing by or with the insolvent for valuable consideration:

Provided that any such transaction takes place before the date of the order of adjudication.

39. (1) In the calculation of dividends, the receiver shall retain in his hands sufficient assets to meet—

Dividends.

- (a) debts provable under this Act, and appearing, from the insolvent's statements or otherwise, to be due to persons resident in places so distant that, in the ordinary course of communication, they have not had sufficient time to tender their proofs;
- (b) debts provable under this Act, the subject of claims not yet determined;
- (c) disputed proofs or claims; and
- (d) the expenses necessary for the administration of the estate or otherwise.

(2) Subject to the provisions of sub-section (1), all money in hand shall be distributed as dividends.

(3) Any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid, out of any money for the time being in the hands of the receiver, any dividend or dividends which he may have failed to receive before that money is applied to the payment of any future dividend or dividends; but he shall not be entitled to disturb the distribution.

- (i) has destroyed or otherwise wilfully prevented or purposely withheld the production of any book, paper, or writing relating to such of his affairs as are subject to investigation under this Act, or
 - (ii) has kept or caused to be kept false books, or
 - (iii) has made false entries in, or withheld entries from, or wilfully altered or falsified, any book, paper, or writing relating to such of his affairs as are subject to investigation under this Act, or
 - (b) fraudulently, with intent to diminish the sum to be divided amongst his creditors, or of giving an undue preference to any of the said creditors,—
 - (i) has discharged or concealed any debt due to or from him, or
 - (ii) has made away with, charged, mortgaged, or concealed any part of his property of what kind soever,
- shall, on conviction, be punishable with imprisonment for a term which may extend to two years.

104. (1) Where the Official Assignee reports to the Court that, in his opinion, an insolvent has been guilty of any offence under section 103, or where the Court is satisfied upon the representation of any creditor that there is ground to believe that the insolvent has been guilty of any such offence, the Court may direct that a notice be served on the insolvent in the prescribed manner to show cause why a charge or charges should not be framed against him.

(2) The notice shall set forth the substance of the offence, and any number of offences may be set forth in the same notice.

(3) At the hearing of such notice, and of any charge framed in pursuance thereof, the Court shall, so far as may be, follow the procedure for the trial of warrant-cases by Magistrates prescribed by Chapter XXI. of the Code of Criminal Procedure, 1898,* and nothing in Chapter XXIII. of the said Code relating to trials before High Courts and Courts of Session shall be applicable to such trial.

(4) Any number of offences under this Act may be charged at the same time.

* Act V. of 1898.

the Court that the debts of the insolvent have been paid in full, or where a composition or scheme has been approved by the Court under section 27, the Court shall, on the application of the debtor, or of any other person interested, by order in writing, annul the adjudication.

(2) Where an adjudication is annulled under sub-section (1), all sales and dispositions of property and payments duly made, and all acts theretofore done, by the Court or receiver, shall be valid; subject as aforesaid, the property of the debtor who was adjudged insolvent shall vest in such person as the Court may appoint, or, in default of any such appointment, shall revert to the debtor to the extent of his right or interest therein on such conditions (if any) as the Court may, by order in writing, declare.

(3) Notice of every order annulling an adjudication shall be published in the local official Gazette, and in such other manner as may be prescribed.

43. (1) Every debtor, whether before or after the making of an order of adjudication, shall produce all books of account, give such inventories of his property, and such lists of his creditors and debtors, and of the debts due to and from them respectively, submit to such examination in respect of his property or his creditors, attend at such times before the Court or receiver, execute such instruments, and generally give such aid in the realisation of his property and the distribution of the proceeds amongst his creditors as may be required by the Court or receiver, or as may be prescribed.

(2) If a debtor, whether before or after the making of an order of adjudication,—

(a) wilfully makes false entries in the inventories or lists referred to in sub-section (1), or

(b) fraudulently or vexatiously conceals, destroys, transfers, removes, or refuses to produce any property or books of account, or

(c) commits any other act of bad faith in the performance of the duties imposed on him by this section,

the Court may sentence him, by order in writing, to simple imprisonment for a term which may extend to one year; and, in every such case, the Court shall record the facts constituting the offence with the statement (if any) made by the debtor.

108. (1) Any creditor, of a deceased debtor whose debt Administration in insol- would have been sufficient to support an vency of estate of person insolvency petition against the debtor dying insolvent. had he been alive, may present, to the Court within the limits of whose ordinary original civil jurisdiction the debtor resided or carried on business for the greater part of the six months immediately prior to his decease, a petition in the prescribed form praying for an order for the administration of the estate of the deceased debtor under this Act.

(2) Upon the prescribed notice being given to the legal representative of the deceased debtor, the Court may, upon proof of the petitioner's debt, unless the Court is satisfied that there is a reasonable probability that the estate will be sufficient for the payment of the debts owing by the deceased, make an order for the administration in insolvency of the deceased debtor's estate, or may upon cause shown, dismiss the petition with or without costs.

(3) A petition for administration under this section shall not be presented to the Court after proceedings have been commenced in any Court of Justice for the administration of the deceased debtor's estate; but that Court may in that case, on proof that the estate is insufficient to pay its debts, transfer the proceedings to the Court exercising jurisdiction in insolvency under this Act, and thereupon the last-mentioned Court may make an order for the administration of the estate of the deceased debtor, and the like consequences shall ensue as under an administration order made on the petition of a creditor.

109. (1) Upon an order being made for the administration Vesting of estate and mode of administration. of a deceased debtor's estate under section 108, the property of the debtor shall vest in the Official Assignee of the Court, and he shall forthwith proceed to realize and distribute the same in accordance with the provisions of this Act.

(2) With the modification hereafter mentioned, all the provisions of Part III., relating to the administration of the property of an insolvent, shall, so far as the same are applicable, apply to the case of such administration order in like manner as to an order of adjudication under this Act.

(3) In the administration of the property of the deceased debtor under an order of administration, the Official Assignee shall have regard to any claims by the legal representative of the deceased debtor to payment of the proper funeral and testamentary expenses

- (e) that the insolvent has failed to account satisfactorily for any loss of assets, or for any deficiency of assets, to meet his liabilities ;
- (f) that the insolvent has brought on, or contributed to, his insolvency by rash and hazardous speculations, or by unjustifiable extravagance in living, or by gambling, or by culpable neglect of his business-affairs ;
- (g) that the insolvent has, within three months preceding the date of the presentation of the petition, when unable to pay his debts as they become due, given an undue preference to any of his creditors ;
- (h) that the insolvent has on any previous occasion been adjudged an insolvent or made a composition or arrangement with his creditors ;
- (i) that the insolvent has concealed or removed his property or any part thereof, or has been guilty of any other fraud or fraudulent breach of trust.

(4) For the purposes of this section, the report of the receiver shall be deemed to be evidence; and the Court may presume the correctness of any statement contained therein.

(5) The powers of suspending and of attaching conditions to an insolvent's discharge may be exercised concurrently.

Effect of order of discharge. 45. (1) An order of discharge shall not release the insolvent from—

- (a) any debt due to the Crown ;
 - (b) any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party ; or
 - (c) any debt or liability in respect of which he has obtained forbearance by any fraud to which he was a party.
- (2) Save as otherwise provided by sub-section (1), an order of discharge shall release the insolvent from all debts entered in the schedule.
- (3) An order of discharge shall not release any person who, at the date of the presentation of the petition, was a partner or co-trustee with the insolvent, or was jointly bound or had made any joint contract with him or any person who was surety for him.

- (b) the investment, whether separately or collectively, of unclaimed dividends, balances, and other sums appertaining to the estates of insolvent debtors, whether adjudicated insolvent under this or any former enactment; and the application of the proceeds of such investment;
- (c) the proceedings of the Official Assignee in taking possession of and realizing the estates of insolvent debtors;
- (d) the remuneration of the Official Assignee;
- (e) the receipts, payments, and accounts of the Official Assignee;
- (f) the audit of the accounts of the Official Assignee;
- (g) the payment of the remuneration of the Official Assignee, of the costs, charges, and expenses of his establishment, and of the costs of the audit of his accounts out of the proceeds of the investments in his hands;
- (h) the payment of the costs incurred in the prosecution of fraudulent debtors and in legal proceedings taken by the Official Assignee under the direction of the Court out of the proceeds aforesaid;
- (i) the payment of any civil liability incurred by an Official Assignee acting under the order or direction of the Court;
- (j) the proceedings to be taken in connection with proposals for composition and schemes of arrangement with the creditors of insolvent debtors;
- (k) the intervention of the Official Assignee at the hearing of applications and matters relating to insolvent debtors and their estates;
- (l) the examination by the Official Assignee of the books and papers of account of undischarged insolvent debtors;
- (m) the service of notices in proceedings under this Act;
- (n) the appointment, meetings, and procedure of committees of Inspection;
- (o) the conduct of proceedings under this Act in the name of a firm;
- (p) the forms to be used in proceedings under this Act;

- (b) the provisions of this Act shall be subject to such other modifications as may be prescribed with the view of saving expense and simplifying procedure :

Provided that nothing in this section shall permit the modification of the provisions of this Act relating to the examination or discharge of the debtor.

49. The costs of any proceeding under this Act, including the costs of maintaining a debtor in the civil prison, shall, subject to any rules made under this Act, be in the discretion of the Court in which the proceeding is had.

50. All Courts having jurisdiction in insolvency and the Courts to be auxiliary to officers of such Courts respectively shall each other. severally act in aid of, and be auxiliary to, each other in all matters of insolvency, and an order of a Court seeking aid with a request to another of the said Courts shall be deemed sufficient to enable the latter Court to exercise, in regard to the matters directed by the order, such jurisdiction as either of such Courts could exercise in regard to similar matters within their respective jurisdictions.

51. (1) The High Court may, with the previous sanction, in the case of the High Court of Judicature at Fort William in Bengal, of the Governor-General in Council, and, in the case of any other High Court, of the Local Government, make rules for carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide—

(a) for the appointment and remuneration of receivers (other than Official Receivers), the audit of the accounts of all receivers, and the costs of such audit,

(b) for meetings of creditors, and

(c) for the procedure to be followed in the case of estates to be administered in a summary manner.

(3) All rules made under this section shall be published in the *Gazette of India*, or in the local official Gazette, as the case may be, and shall, on such publication, have effect as if enacted in this Act.

(a) in British India, before—

(i) any Court or Magistrate, or

(ii) any officer or other person appointed to administer oaths under the Code of Civil Procedure, 1908;*

(b) in England, before any person authorized to administer oaths in His Majesty's High Court of Justice, or in the Court of Chancery of the County Palatine of Lancaster, or before any Registrar of a Bankruptcy Court, or before any officer of a Bankruptcy Court authorized in writing in that behalf by the Judge of the Court, or before a Justice of the Peace for the county or place where it is sworn;

(c) in Scotland or in Ireland, before a Judge Ordinary, Magistrate, or Justice of the Peace; and,

(d) in any other place, before a Magistrate or Justice of the Peace or other person qualified to administer oaths in that place (he being certified to be a Magistrate or Justice of the Peace, or qualified, as aforesaid, by a British Minister or British Consul or British Political Agent, or by a Notary Public).

118. (1) No proceeding in insolvency shall be invalidated by any formal defect, or by any irregularity, unless the Court before which an objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of that Court.

(2) No defect or irregularity in the appointment of an Official Assignee or member of a Committee of Inspection shall vitiate any act done by him in good faith.

119. Where an insolvent is a trustee within the Indian Trustee Act, 1866,† section 35 of that Act shall have effect so as to authorize the appointment of a new trustee in substitution for the insolvent (whether voluntarily resigning or not), if it appears expedient to do so, and all provisions of that Act, and of any other Act relative thereto, shall have effect accordingly.

* Act V. of 1908.

† Act XXVII. of 1866

Act in any part of the territories administered by such Local Government, namely—

section 15, sub-sections (2) and (3),

section 16, sub-section (3),

sections 25 to 40 [except sub-section (1), clause (a), and sub-section (4) of section 35],

section 44, sub-sections (3) and (4), and section 53.

Savings.

55. Nothing in this Act shall—

(a) affect the Indian Insolvency Act, 1848,* or section 8 of the Lower Burma Courts Act, 1900,† or

(b) apply to cases to which Chapter IV. of the Dekkhan Agriculturists' Relief Act, 1879,‡ is applicable.

56. (1) The enactments mentioned in the Schedule are hereby repealed to the extent specified in the fourth column thereof.

(2) Where, in any enactment or instrument in force at the date of the commencement of this Act, reference is made to Chapter XX. (OF INSOLVENT JUDGMENT-DEBTORS) or the Code of Civil Procedure, 1877,§ or of the Code of Civil Procedure, 1882,|| or to any section of either of those Chapters, such reference shall, so far as may be practicable, be construed as applying to this Act, or to the corresponding section thereof.

* Stat. 11 & 12 Vict., c. 21.

† Act VI. of 1900.

‡ Act XVII. of 1879.

§ Act X. of 1877.

|| Act XIV. of 1882.

125. Such fees and percentages shall be charged for and in respect of proceedings under this Act as may be prescribed.

Fees and percentages.

126. All Courts having jurisdiction under this Act shall make such orders and do such things as may be necessary to give effect to section 118 of the Bankruptcy Act, 1883,* and to section 50 of the Provincial Insolvency Act, 1907.†

Courts to be auxiliary to each other.

127. (1) The enactments mentioned in the third schedule are hereby repealed to the extent specified in the fourth column thereof.

Repeal of enactments.

(2) Notwithstanding the repeal effected by this Act, the proceedings under an insolvency petition under the Indian Insolvency Act, 1848,‡ pending at the commencement of this Act, shall, except so far as any provision of this Act is expressly applied to pending proceedings, continue, and all the provisions of the said Indian Insolvency Act shall, except as aforesaid, apply thereto, as if this Act had not been passed.

THE FIRST SCHEDULE.

(See section 26.)

MEETINGS OF CREDITORS.

1. The Official Assignee may at any time summon a meeting of creditors, and shall do so whenever so directed by the Court or by the creditors by resolution at any meeting, or whenever requested in writing by one-fourth in value of the creditors who have proved.

Meetings of creditors.

2. Meetings shall be summoned by sending notice of the time and place thereof to each creditor at the address given in his proof, or, if he has not proved, at the address given in the insolvent's schedule, or such other address as may be known to the Official Assignee.

Summoning of meetings.

3. The notice of any meeting shall be sent off not less than seven days before the day appointed for the meeting, and may be delivered per-

Notice of meetings.

* Stat 46 & 47 Vic, c 52.

† Act III of 1907

‡ Stat 11 & 12 Vic, c 21.

date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance if any, due to him after deducting the value of his security. If he votes in respect of his whole debt, he shall be deemed to have surrendered his security, unless the Court on application is satisfied that the omission to value the security has arisen from inadvertence.

12. Where a creditor seeks to prove in respect of a bill of exchange, promissory note, or other negotiable instrument or security on which the insolvent is liable, such bill of exchange, note, instrument, or security must, subject to any special order of the Court made to the contrary, be produced to the Official Assignee before the proof can be admitted for voting.

13. It shall be competent to the Official Assignee, within twenty-eight days after a proof esumating the value of a security has been made use of in voting at any meeting, to require the creditor to give up the security for the benefit of the creditors generally, on payment of the value so esumated.

14. If one partner in a firm is adjudged insolvent, any creditor or to whom that partner is indebted jointly with the other partners in the firm, or any of them, may prove his debt for the purpose of voting at any meeting of creditors, and shall be entitled to vote thereat.

15. The Official Assignee shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the Court. If he is in doubt whether the proof of a creditor should be admitted or rejected, he shall mark the proof as objected to, and shall allow the creditor to vote, subject to the vote being declared invalid in the event of the objection being sustained.

16. A creditor may vote either in person or by proxy.

17. Every instrument of proxy shall be in the prescribed form, and shall be issued by the Official Assignee.

18. A creditor may give a general proxy to his attorney, or to his manager or clerk, or any other person in his regular employment. In such

ACT IX. OF 1887 :

The Provincial Small Cause Courts Act, 1887.*

RECEIVED THE G.-G.'S ASSENT ON 24TH FEBRUARY 1887.

An Act to consolidate and amend the Law relating to Courts of Small Causes established beyond the Presidency-towns.

WHEREAS it is expedient to consolidate and amend the law relating to Courts of Small Causes established beyond the local limits, for the time being, of the ordinary original civil jurisdiction of the High Courts of Judicature at Fort William in Bengal and at Madras and Bombay : It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Title, extent, and commencement.

1. (1) This Act may be called the Provincial Small Cause Courts Act 1887 ;

(2) It extends to the whole of British India ; and

(3) It shall come into force on the first day of July 1887.

2. (1) [*Repeal of enactments.—Repealed by Act XII. of 1891.*]

* Act IX. of 1887 has been applied to British Baluchistan by Reg. I. of 1890, s. 3

The Act has been declared, by notification under the Scheduled Districts Act (XIV. of 1874), to be in force in the Districts of Hazaribagh, Lohardaga, and Manbhum, Pargana Dhalbhum and the Kolhan in the District of Singhbhum (*Gazette of India*, 1887, Pt. I, p. 582), and has been extended, by notification under the same Act, to the Town of Mandalay (*Gazette of India*, 1888, Pt. I, p. 88)

For power to confer, upon a Subordinate Judge or Munsif in Bengal, the North-Western Provinces, and Assam, the jurisdiction of a Court of Small Causes under this Act, *see* Act XII. of 1887, s. 25

Ss 15, 32, 37, 38, 39, and 40 of the Bengal, North-Western Provinces, and Assam Civil Courts Act, 1887, apply to Courts of Small Causes constituted under this Act.—*See* Act XII. of 1887, s. 40.

4,000—24-2-1910.

Act IX, 1887.—1.

Affidavit to state if creditor holds security.

5. The affidavit shall state whether the creditor is or is not a secured creditor.

Cost of proving debts.

6. A creditor shall bear the cost of proving his debt unless the Court otherwise specially orders.

7. Every creditor who has lodged a proof shall be entitled to see and examine the proofs of other creditors at all reasonable times.

8. A creditor in lodging his proofs shall deduct from his debt all trade discounts, but he shall not be compelled to deduct any discount not exceeding five per centum on the net amount of his claim, which he may have agreed to allow for payment in cash.

Proof by Secured Creditors.

9. If a secured creditor realizes his security, he may prove for the balance due to him, after deducting the net amount realized.

10. If a secured creditor surrenders his security to the Official Assignee for the general benefit of the creditors, he may prove for his whole debt.

11. If a secured creditor does not either realize or surrender his security, he shall, before ranking for dividend, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed.

12. (1) Where a security is so valued, the Official Assignee may at any time redeem it on payment to the creditor of the assessed value.

(2) If the Official Assignee is dissatisfied with the value at which a security is assessed, he may require that the property comprised in any security so valued be offered for sale at such times, and on such terms and conditions, as may be agreed on between the creditor and the Official Assignee, or as, in default of agreement, the Court may direct. If the sale is by public auction, the creditor, or the Official Assignee on behalf of the estate, may bid or purchase:

CHAPTER II.

CONSTITUTION OF COURTS OF SMALL CAUSES.

5. (1) The Local Government, with the previous sanction of the Governor-General in Council, may, by order in writing, establish a Court of Small Causes at any place within the territories under its administration beyond the local limits, for the time being, of the ordinary original civil jurisdiction of a High Court of Judicature established in a Presidency-town.

(2) The local limits of the jurisdiction of the Court of Small Causes shall be such as the Local Government may define, and the Court may be held at such place or places within those limits, as the Local Government may appoint.

6. (1) When a Court of Small Causes has been established, the Local Government shall, by order in writing, appoint a Judge of the Court.

(2) The Judge may be the Judge of one Court of Small Causes, or of two or more such Courts, as the Local Government directs.

7. (1) A Judge who is the Judge of two or more such Courts may, with the sanction of the District Court, fix the times at which he will sit in each of the Courts of which he is Judge.

(2) Notice of the times shall be published in such manner as the High Court from time to time directs.

8. (1) The Local Government, with the previous sanction of the Governor-General in Council, may, by order in writing, appoint an Additional Judge of a Court of Small Causes, or of two or more such Courts.

(2) The Additional Judge shall discharge such of the functions of the Judge of the Court or Courts as the Judge may assign to him, and, in the discharge of those functions, shall exercise the same powers as the Judge.

(3) The Judge may withdraw from the Additional Judge any business pending before him.

(4) When the Judge is absent, the Additional Judge may discharge all or any of the functions of the Judge.

17. Subject to the provisions of rule 12, a creditor shall in no case receive more than sixteen annas in the rupee and interest as provided by this Act.
- Limit of receipt.

Taking Accounts of Property Mortgaged, and of the Sale thereof.

18. Upon application by any person claiming to be a mortgagee of any part of the insolvent's real or leasehold estate, and whether such mortgage is by deed or otherwise, and whether the same is of a legal or equitable nature, or upon application by the Official Assignee with the consent of such person claiming to be a mortgagee as aforesaid, the Court shall proceed to inquire whether such person is such mortgagee, and for what consideration and under what circumstances; and if it is found that such person is such mortgagee, and if no sufficient objection appears to the title of such person to the sum claimed by him under such mortgage, the Court shall direct such accounts and inquiries to be taken as may be necessary for ascertaining the principal, interest, and costs due upon such mortgage, and of the rents and profits, or dividends, interest, or other proceeds received by such person, or by any other person by his order, or for his use in case he has been in possession of the property over which the mortgage extends or any part thereof, and the Court, if satisfied that there ought to be a sale, shall direct notice to be given in such newspapers as the Court thinks fit, when, and where, and by whom and in what way, the said premises or property, or the interest therein so mortgaged, are to be sold, and that such sale be made accordingly, and that the Official Assignee (unless it is otherwise ordered) shall have the conduct of such sale: but it shall not be imperative on any such mortgagee to make such application. At any such sale the mortgagee may bid and purchase.

- 19 All proper parties shall join in the conveyance to the purchaser as the Court directs.
- Conveyance.

20. The moneys to arise from such sale shall be applied, in the first place, in payment of the costs, charges, and expenses of and occasioned by the application to the Court, and of such sale, and the commission (if any) of the Official Assignee, and, in the next place, in payment and satisfaction, so far as the same extend, of what shall be found due to such mortgagee for principal, interest, and costs, and
- Proceeds of sale.

Court, the jurisdiction of a Judge of a Court of Small Causes for the trial of suits of which the value does not exceed twenty rupees.

(4) The Registrar shall try such suits cognizable by him as the Judge may, by general or special order, direct.

(5) A Registrar may be suspended or removed from office by the Local Government.

13. Subject to any enactment for the time being in force, and to any orders made by the Local Government in this behalf, the law or practice for the time being applicable to the appointment, punishment, and transfer of ministerial officers of a Civil Court of the lowest grade competent to try an original suit of the value of five thousand rupees in that portion of the territories administered by the Local Government in which a Court of Small Causes is established shall, so far as it can be made applicable, apply to the appointment, punishment, and transfer of ministerial officers of the Court of Small Causes other than the Registrar (if any) of that Court.

14. (1) The ministerial officers of a Court of Small Causes shall, in addition to any duties mentioned in this Act, or in any other enactment for the time being in force, as duties which are or may be imposed on any of them, discharge such duties of a ministerial nature as the Judge directs.

(2) The High Court may make rules consistent with this Act and with any other enactment for the time being in force, conferring and imposing, on the ministerial officers of a Court of Small Causes, such powers and duties as it thinks fit, and regulating the mode in which powers and duties so conferred and imposed are to be exercised and performed.

CHAPTER III.

JURISDICTION OF COURTS OF SMALL CAUSES.

15. (1) A Court of Small Causes shall not take cognizance of the suits specified in the Second Schedule as suits excepted from the cognizance of a Court of Small Causes.

(2) Subject to the exceptions specified in that Schedule, and to the provisions of any enactment for the time being in force, all

the interest or consideration shall, for the purposes of dividend, be calculated at a rate not exceeding six per centum per annum, without prejudice to the right of a creditor to receive out of the debtor's estate any higher rate of interest to which he may be entitled after all the debts proved have been paid in full.

Debt payable at a Future Time.

24. A creditor may prove for a debt not payable when the debtor is adjudged an insolvent as if it were payable presently, and may receive dividends equally with the other creditors, deducting therefrom only a rebate of interest at the rate of six per centum per annum computed from the declaration of a dividend to the time when the debt would have become payable, according to the terms on which it was contracted.

Admission or Rejection of Proofs.

25. The Official Assignee shall examine every proof and the grounds of the debt, and in writing admit or reject it in whole or in part, or require further evidence in support of it. If he rejects a proof, he shall state in writing to the creditor the grounds of the rejection.

26. If the Official Assignee thinks that a proof has been improperly admitted, the Court may, on the application of the Official Assignee, after notice to the creditor who made the proof, expunge the proof or reduce its amount.

27. The Court may also expunge or reduce a proof upon the application of a creditor if the Official Assignee declines to interfere in the matter, or, in the case of a composition or scheme, upon the application of the insolvent.

18. (1) Suits cognizable by the Registrar under section 12 sub-sections (3) and (4), shall be tried by him, and decrees passed therein shall be executed by him in like manner in all respects as the Judge might try the suits, and execute the decrees, respectively.

(2) The Judge may transfer to his own file, or to that of the Additional Judge, if an Additional Judge has been appointed, any suit or other proceeding pending on the file of the Registrar.

19. (1) When the Judge of a Court of Small Causes is absent, and an Additional Judge has not been appointed, or, having been appointed, is also absent, the Registrar may admit a complaint, or return or reject a complaint for any reason for which the Judge might return or reject it.

(2) The Judge may, of his own motion, or on the application of a party, return or reject a complaint which has been admitted by the Registrar, or admit a complaint which has been returned or rejected by him:

Provided that, where a party applies for the return or rejection or the admission of a complaint under this sub-section, and his application is not made at the first sitting of the Judge after the day on which the Registrar admitted or returned or rejected the complaint, the Judge shall dismiss the application, unless the applicant satisfies him that there was sufficient cause for not making the application at that sitting.

20. (1) If, before the date appointed for the hearing of a suit, the defendant or his agent duly authorized in that behalf appears before the Registrar, and admits the plaintiff's claim, the Registrar may, if the Judge is absent, and an Additional Judge has not been appointed, or, having been appointed, is also absent, pass against the defendant, upon the admission, a decree, which shall have the same effect as a decree passed by the Judge.

(2) Where a decree has been passed by the Registrar under sub-section (1), the Judge may grant an application for review of judgment, and re-hear the suit, on the same conditions, on the same grounds, and in the same manner, as if the decree had been passed by himself.

(2) When a Court returns a plaint under sub-section (1), it shall comply with the provisions of the second paragraph of section 57* of the Code of Civil Procedure, and make such order with respect to costs as it deems just; and the Court shall, for the purposes of the Indian Limitation Act, 1877,† be deemed to have been unable to entertain the suit by reason of a cause of a nature like to that of defect of jurisdiction.

24. Where an order specified in section 588, clause 29,‡ of the Code of Civil Procedure, is made by a Court of Small Causes, an appeal therefrom shall lie to the District Court.

25. The High Court, for the purpose of satisfying itself that a decree or order made in any case decided by a Court of Small Causes was according to law, may call for the case, and pass such order with respect thereto as it thinks fit.

26. [*Repealed by Act X. of 1888, s. 4.*]

27. Save as provided by this Act, a decree or order made under the foregoing provisions of this Act by a Court of Small Causes shall be final.

CHAPTER V.

SUPPLEMENTAL PROVISIONS.

28. (1) A Court of Small Causes shall be subject to the administrative control of the District Court, and to the superintendence of the High Court, and shall—

* This section of Act XIV. of 1882 corresponds to rule 10, Order VII. of Act V. of 1908, to which the reference should now mean to apply.—See s. 158 of the latter Act.

† Should now be taken to apply to the Limitation Act, 1908 (Act IX. of 1908).

‡ See now s. 104 and rule 1, Order XLIII. of Act V. of 1908 (the new Code), to which the above reference to cl. (29) of s. 588 of Act XIV. of 1882 (the old Code) should now be taken to have been made.—See s. 158 of the first-mentioned Act.

SECTIONS.

26. Probate of copy where original exists.
27. Administration until will produced.
- (b.)—*Grants for the Use and Benefit of Others having Right.*
28. Administration with will annexed to attorney of absent executor.
29. Administration with will annexed to attorney of absent person, who, if present, would be entitled to administer.
30. Administration to attorney of absent person entitled to administer in case of intestacy
31. Administration during minority of sole executor or residuary legatee.
32. Administration during minority of several executors or residuary legatees.
33. Administration for use and benefit of lunatic.
34. Administration *pendente lite*.
(c.)—*For Special Purposes.*
35. Probate limited to purpose specified in will
36. Administration with will annexed limited to particular purpose.
37. Administration limited to trust-property
38. Administration limited to suit
39. Administration limited to purpose of becoming party to suit to be brought against executor or administrator.
40. Administration limited to collection and preservation of deceased's property.
41. Appointment, as administrator, of person other than one who, under ordinary circumstances, would be entitled to administration.
- (d.)—*Grants with Exception.*
42. Probate or administration with will annexed subject to exception.

SECTIONS.

43. Administration with exception.
(e.)—*Grants of the Rest.*
44. Probate or administration of rest.
- (f.)—*Grants of Effects unadministered.*
45. Grant of effects unadministered.
46. Rules as to grants of effects unadministered.
47. Administration when limited grant expired, and still some part of estate unadministered.

CHAPTER IV.

ALTERATION AND REVOCATION OF GRANTS.

48. What errors may be rectified by Court
49. Procedure where codicil discovered after grant of administration with will annexed
50. Revocation or annulment for just cause
"just cause."

CHAPTER V.

OF THE PRACTICE IN GRANTING AND REVOKING PROBATES AND LETTERS OF ADMINISTRATION.

51. Jurisdiction of District Judge in granting and revoking probates, &c.
52. Power to appoint Delegate of District Judge to deal with non-contentious cases.
53. District Judge's powers as to grant of probate and administration.
54. District Judge may order person to produce testamentary papers
55. Proceedings of District Judge's Court in relation to probate and administration.

(c) the practice and procedure of Courts of Small Causes,

(d) appeal from certain orders of those Courts and revision of cases decided by them, and

(e) the finality of their decrees and orders subject to such appeal and revision as are provided by this Act,

applies to Courts invested, by or under any enactment for the time being in force, with the jurisdiction of a Court of Small Causes, so far as regards the exercise of that jurisdiction by those Courts.

(2) Nothing in sub-section (1), with respect to Courts invested with the jurisdiction of a Court of Small Causes, applies to suits instituted, or proceedings commenced, in those Courts before the date on which they were invested with that jurisdiction.

33. A Court invested with the jurisdiction of a Court of Small Causes with respect to the exercise of that jurisdiction, and the same Court with respect to the exercise of its jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, shall, for the purposes of this Act and the Code of Civil Procedure,* be deemed to be different Courts.

Application of Act and Code to Court so invested as to two Courts.

34. Notwithstanding anything in the last two foregoing sections,—

(a) when, in exercise of the jurisdiction of a Court of Small Causes, a Court invested with that jurisdiction sends a decree for execution to itself as a Court having jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, or

(b) when a Court, in the exercise of its jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, sends a decree for execution to itself as a Court invested with the jurisdiction of a Court of Small Causes,

the documents mentioned in section 224† of the Code of Civil Procedure shall not be sent with the decree unless, in any case, the Court, by order in writing, requires them to be sent.

* Act V. of 1908.

† Should now be taken as referring to rule 6, Order XXI. of Act V. of 1908 (the Code now in force).—See s. 158 of that Act.

SECTIONS.

- 90. Power of executor or administrator to dispose of property.
- 91. Purchase by executor or administrator of deceased's property.
- 92. Powers of several executors or administrators exercisable by one
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- 104. Save as aforesaid, all debts to be paid equally and rateably
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- 106. Executor or administrator not bound to pay legacies without indemnity
- 107. Abatement of general legacies Executor not to pay one legatee in preference to another.
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(3) a suit concerning an act or order purporting to be done or made by any other officer of the Government in his official capacity, or by a Court of Wards, or by an officer of a Court of Wards, in the execution of his office ;

(4) a suit for the possession of immoveable property, or for the recovery of an interest in such property ;

(5) a suit for the partition of immoveable property ;

(6) a suit by a mortgagee of immoveable property for the foreclosure of the mortgage, or for the sale of the property, or by a mortgagor, of immoveable property for the redemption of the mortgage ;

(7) a suit for the assessment, enhancement, abatement, or apportionment of the rent of immoveable property ;

(8) a suit for the recovery of rent other than house-rent, unless the Judge of the Court of Small Causes has been expressly invested by the Local Government with authority to exercise jurisdiction with respect thereto,

(9) a suit concerning the liability of land to be assessed to land-revenue,

(10) a suit to restrain waste ;

(11) a suit for the determination or enforcement of any other right to, or interest in, immoveable property ;

(12) a suit for the possession of an hereditary office, or of an interest in such an office, including a suit to establish an exclusive or periodically-recurring right to discharge the functions of an office ;

(13) a suit to enforce payment of the allowance or fees respectively called *mahkama* and *bakh*, or of cesses or other dues when the cesses or dues are payable to a person by reason of his interest in immoveable property, or in an hereditary office, or in a shrine or other religious institution ;

(14) a suit to recover, from a person to whom compensation has been paid under the Land Acquisition Act, 1894,* the whole or any part of the compensation ;

(15) a suit for the specific performance or rescission of a contract ;

(16) a suit for the rectification or cancellation of an instrument ;

(17) a suit to obtain an injunction ;

(18) a suit relating to a trust, including a suit to make good, out of the general estate of a deceased trustee, the loss occasioned by a breach of trust, and a suit by a co-trustee to enforce, against the estate of a deceased trustee, a claim for contribution ;

(19) a suit for a declaratory decree, not being a suit instituted under section 283 or section 332† of the Code of Civil Procedure ;

* The reference to Act X. of 1870 has been altered in accordance with Act I. of 1894, s. 2 (3).

† For "section 283 or section 332" read "rule 63 or rules 100, 101 & 103 of Order XXI."—See s. 158 of Act V. of 1908 (the new Code).

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152. Grant of probate or administration to supersede certificate under Act XXVII. of 1860, or Bombay Regulation VIII. of 1827.
153. [*Amendment of Court Fees Act (VII. of 1870)*] *Repealed by the Succession Certificate Act (VII. of 1889)*

SECTIONS.

154. Amendment of Hindu Wills Act, 1870.
155. Validation of grants of probate and administration made in Lower Burma
156. Amendment of Limitation Act, 1877.
157. Surrender of revoked probate or letters of administration.
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(34) a suit on a policy of insurance, or for the recovery of any premium paid under any such policy ;

(35) a suit for compensation—

(a) for loss occasioned by the death of a person caused by actionable wrong,

(b) for wrongful arrest, restraint, or confinement ;

(c) for malicious prosecution ;

(d) for libel ;

(e) for slander ;

(f) for adultery or seduction ;

(g) for breach of contract of betrothal or promise of marriage ;

(h) for inducing a person to break a contract made with the plaintiff ;

(i) for obstruction of an easement or diversion of a watercourse ;

(j) for illegal, improper, or excessive distress or attachment ;

(k) for improper arrest under Chapter XXXIV.* of the Code of Civil Procedure, or in respect of the issue of an injunction wrongfully obtained under Chapter XXXV.* of that Code ; or

(l) for injury to the person in any case not specified in the foregoing sub-clauses of this clause ;

(36) a suit by a Mahomedan for exigible (*muajjal*) or deferred (*muwajjal*) dower,

(37) a suit for the restitution of conjugal rights, for the recovery of a wife, for the custody of a minor, or for a divorce ;

(38) a suit relating to maintenance ;

(39) a suit for arrears of land-revenue, village-expenses, or other sums payable to the representative of a village community, or to his heir or other successor in title ;

(40) a suit for profits payable by the representative of a village-community, or by his heir or other successor in title, after payment of land-revenue, village-expenses, and other sums ;

(41) a suit for contribution by a sharer in joint property in respect of a payment made by him of money due from a co-sharer or by a manager of joint property, or a member of an undivided family, in respect of a payment made by him on account of the property or family ;

* Chapter XXXIV. & XXXV. of Act XIV. of 1882 correspond to Order XXXVIII. (excluding rule 7 and including s 95) and Order XXXIX. (including s. 95), respectively, of Act V. of 1908 (the new Code), to which the reference to the Chapters aforesaid now be taken to apply.—See s 158 of the latter Act.

2. Chapters II. to XIII., both inclusive, of this Act, shall apply in the case of every Hindu, Muhammadan, Buddhist, and person exempted under section 332 of the Indian Succession Act, 1865,* dying before, on, or after the said first day of April 1881 :

Provided that nothing herein contained shall be deemed to render invalid any transfer of property duly made before that day :

Provided also that, except in cases to which the Hindu Wills Act, 1870, applies,†

no Court in any local area beyond the limits of the towns of Calcutta, Madras, and Bombay, and the territories for the time being administered by the Chief Commissioner of British Burma,‡

and no High Court, in exercise of the concurrent jurisdiction over such local area hereby conferred,

shall receive applications for probate or letters of administration until the Local Government has, with the previous sanction of the Governor-General in Council, by a notification in the official Gazette, authorized it so to do.§

* Act X of 1865.

† The Hindu Wills Act (XXI. of 1870) applies, in the cases of Hindus, Jains, Shikhs, and Buddhists, in the territories subject to the Lieutenant-Governor of Bengal, and in the towns of Madras and Bombay.

‡ Read now Lower Burma (see the Upper Burma Laws Act), XX. of 1886, s 4 The Chief Commissioner is now Lieutenant Governor of Burma—See Proclamation dated 11th April, 1897, *Gazette of India*, 1897, Pt. I., p. 261.

§ The following Courts have been authorized to receive applications for probate or letters of administration within the areas mentioned, namely.—

in Bengal—the High Court at Calcutta, throughout the territories subject to the Lieutenant-Governor of Bengal, all District Judges, as defined in the Act, within the said territories, and such Judicial Officers as the High Court may, from time to time, appoint as District Delegates (see *Calcutta Gazette*, 1881, Pt. I, p 445);

in the Andaman and Nicobar Islands—the Court of the Deputy Superintendent and the Court of the Chief Commissioner (see *Gazette of India*, 1881, Pt I, p 214),

in Assam—the High Court at Calcutta, throughout Assam, all District Judges, as defined in the Act, within the Province, and such Judicial Officers as the High Court may from time to time, appoint as District Delegates (see *Assam Manual of Local Rules and Orders*, Ed. 1893, p. 180);

THE INDIAN REGISTRATION ACT, 1908:
ACT NO. XVI. OF 1908.

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of that Act, and any other person who has not completed his age of eighteen years; and "minority" means the status of any such person :

"will" means the legal declaration of the intentions of the testator with respect to his property which he desires to be carried into effect after his death :

"codicil" means an instrument made in relation to a will, and explaining, altering, or adding to its dispositions. It is considered as forming an additional part of the will :

"specific legacy" means a legacy of specified property :

"demonstrative legacy" means a legacy directed to be paid out of specified property :

"probate" means the copy of a will certified under the seal of a Court of competent jurisdiction, with a grant of administration to the estate of the testator :

"executor" means a person to whom the execution of the last will of a deceased person is, by the testator's appointment, confided :

"administrator" means a person appointed by competent authority to administer the estate of a deceased person when there is no executor ; and

"District Judge" means the Judge of a principal Civil Court of original jurisdiction.

CHAPTER II.

OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.*

4. The executor or administrator, as the case may be, of a deceased person, is his legal representative for all purposes, and all the property of the deceased person vests in him as such.

Character and property of executor or administrator as such.

But nothing herein contained shall vest in an executor or administrator any property of a deceased person which would otherwise have passed by survivorship to some other person.

* Compare Act X. of 1865, Pt. XXIX. As to grants of letters of administration and probates to the Administrator-General, see the Administrator-General's Act (II. of 1874).

SECTIONS.

57. Registering officers to allow inspection of certain books and indexes, and to give certified copies of entries.

(B)—*As to the Procedure on admitting to Registration.*

58. Particulars to be endorsed on documents admitted to registration
59. Endorsements to be dated and signed by registering officer.
60. Certificate of registration
61. Endorsements and certificate to be copied and document returned.
62. Procedure on presenting document in language unknown to registering officer.
63. Power to administer oaths and record of substance of statements

(C)—*Special Duties of Sub-Registrar.*

64. Procedure where document relates to land in several sub-districts.
65. Procedure where document relates to land in several districts.

(D)—*Special Duties of Registrar.*

66. Procedure after registration of documents relating to land
67. Procedure after registration under section 30, sub-section (2).

(E)—*Of the Controlling Powers of Registrars and Inspectors-General.*

68. Power of Registrar to superintend and control Sub-Registrars
69. Power of Inspector-General to superintend registration offices and make rules
70. Power of Inspector-General to remit fines.

SECTIONS.

PART XII.

OF REFUSAL TO REGISTER.

71. Reasons for refusal to register to be recorded.
72. Appeal to Registrar from orders of Sub-Registrar refusing registration on ground other than denial of execution.
73. Application to Registrar where Sub-Registrar refuses to register on ground of denial of execution
74. Procedure of Registrar on such application
75. Order by Registrar to register and procedure thereon
76. Order of refusal by Registrar.
77. Suit in case of order of refusal by Registrar.

PART XIII.

OF THE FEES FOR REGISTRATION, SEARCHES, AND COPIES.

78. Fees to be fixed by Local Government
79. Publication of fees.
80. Fees payable on presentation.

PART XIV.

OF PENALTIES.

81. Penalty for incorrectly endorsing, copying translating, or registering documents with intent to injure.
82. Penalty for making false statements, delivering false copies or translations, false personation, and abetment.
83. Registering officer may commence prosecutions.
84. Registering officers to be deemed public servants.

If different executors are appointed by the codicil, the probate of the will must be revoked, and a new probate granted of the will and the codicil together.

Procedure when different executors appointed by codicil.

11. When probate has been granted to several executors, and one of them dies, the entire representation of the testator accrues to the surviving executor or executors.

Accrual of representation to surviving executor.

12. Probate of a will, when granted, establishes the will from the death of the testator, and renders valid all intermediate acts of the executor as such.

Effect of probate.

13. Letters of administration can not be granted to any person who is a minor, or is of unsound mind.

To whom administration may not be granted.

14. Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death.

Effect of letters of administration.

15. Letters of administration do not render valid any intermediate acts of the administrator tending to the diminution or damage of the intestate's estate.

Acts not validated by administration.

16. When a person appointed an executor has not renounced the executorship, letters of administration shall not be granted to any other person until a citation has been issued, calling upon the executor to accept or renounce his executorship;

Grant of administration where executor has not renounced.

except that, when one or more of several executors has or have proved a will, the Court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved.

Exception.

17. The renunciation may be made orally in the presence of the Judge, or by a writing signed by the person renouncing, and, when made, shall preclude him from ever thereafter applying for probate of the will appointing him executor.

Form and effect of renunciation of executorship.

THE INDIAN REGISTRATION ACT, 1908 :

ACT NO. XVI. OF 1908.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

Received His Excellency's Assent on the 18th December 1908.

An Act to consolidate the Enactments relating to the Registration of Documents.

WHEREAS it is expedient to consolidate the enactments relating to the registration of documents; It is hereby enacted as follows :—

PART I.

PRELIMINARY.

Short title, extent, and commencement.

1. (1) This Act may be called the Indian Registration Act, 1908.

(2) It extends to the whole of British India except such districts or tracts of country as the Local Government may, with the previous sanction of the Governor-General in Council. exclude from its operation.

(3) It shall come into force on the first day of January 1909.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) "addition" means the place of residence, and the profession, trade, rank, and title (if any) of a person described, and, in the case of a Native of India, his caste (if any) and his father's name, or, where he is usually described as the son of his mother, then his mother's name :

(2) "book" includes a portion of a book and also any number of sheets connected together with a view of forming a book or portion of a book :

(3) "district" and "sub-district," respectively, mean a district and sub-district formed under this Act :

(4) "District Court" includes the High Court in its ordinary original civil jurisdiction :

23. When the deceased has died intestate, administration of his estate may be granted to any person to whom administration who according to the rules for the distribution of the estate of an intestate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate.

When several such persons apply for administration, it shall be in the discretion of the Court to grant it to any one or more of them.

When no such person applies, it may be granted to a creditor of the deceased.

CHAPTER III.

OF LIMITED GRANTS.*

(a.)—Grants limited in Duration.

24. When the will has been lost or mislaid since the testator's death, or has been destroyed by wrong or accident, and not by any act of the testator, and a copy or the draft of the will has been preserved, probate may be granted of such copy or draft, limited until the original or a properly authenticated copy of it be produced.

25. When the will has been lost or destroyed, and no copy has been made, nor the draft preserved, probate may be granted of its contents, if they can be established by evidence.

26. When the will is in the possession of a person residing out of the province in which application for probate is made, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for the interests of the estate that probate should be granted without waiting for the arrival of the original, probate may be granted of the copy so transmitted, limited until the will or an authenticated copy of it be produced.

27. Where no will of the deceased is forthcoming but there is reason to believe that there is a will in existence, letters of administration may be granted until the will is produced.

* Compare Act X. of 1865, Pt. XXX. (a) to (f).

(2) The Branch Inspector-General of Sindh may hold simultaneously any other office under Government.

5. (1) For the purposes of this Act, the Local Government shall form districts and sub-districts, and shall
Districts and sub-districts. prescribe and may alter the limits of such districts and sub-districts.

(2) The districts and sub-districts formed under this section, together with the limits thereof, and every alteration of such limits, shall be notified in the local official gazette.

(3) Every such alteration shall take effect on such day after the date of the notification as is herein mentioned.

6. The Local Government may appoint such persons, whether Registrars and Sub-Registrars. public officers or not, as it thinks proper, to be Registrars of the several districts, and to be Sub-Registrars of the several sub-districts, formed as aforesaid, respectively.

7. (1) The Local Government shall establish in every district an office to be styled the office of the Registrar, and in every sub-district an office or offices to be styled the office of the Sub-Registrar or the offices of the Joint Sub-Registrars.

(2) The Local Government may amalgamate with any office of a Registrar any office of a Sub-Registrar subordinate to such Registrar, and may authorize any Sub-Registrar whose office has been so amalgamated to exercise and perform, in addition to his own powers and duties, all or any of the powers and duties of the Registrar to whom he is subordinate:

Provided that no such authorization shall enable a Sub-Registrar to hear an appeal against an order passed by himself under this Act.

8. (1) The Local Government may also appoint officers, to be called Inspectors of Registration-offices, and may prescribe the duties of such officers.
Inspectors of Registration-offices.

(2) Every such Inspector shall be subordinate to the Inspector-General.

the rule* for the distribution of intestates' estates applicable in the case of the deceased, be a minor or lunatic, letters of administration, with or without the will annexed, as the case may be, shall be granted to the person to whom the care of his estate has been committed by competent authority, or, if there be no such person, to such other person as the Court thinks fit to appoint, for the use and benefit of the minor or lunatic, until he attains majority, or becomes of sound mind as the case may be.

84. Pending any suit touching the validity of the will of a deceased person, or for obtaining or revoking any probate or any grant of letters of administration, the Court may appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator, other than the right of distributing such estate, and every such administrator shall be subject to the immediate control of the Court, and shall act under its direction.

(c)—For Special Purposes.

35. If an executor be appointed for any limited purpose specified in the will, the probate shall be limited to that purpose; and, if he should appoint an agent to take administration on his behalf, the letters of administration, with the will annexed, shall accordingly be limited.

36. If an executor appointed generally give an authority to an attorney to prove a will on his behalf, and the authority is limited to a particular purpose, the letters of administration, with the will annexed, shall be limited accordingly.

37. Where a person dies, leaving property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his own account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to the beneficiary, or to some other person on his behalf.

38. When it is necessary that the representative of a person deceased be made a party to a pending suit, and the executor or person entitled

* See. Read "rules."

14. (1) Subject to the approval of the Governor-General in Council, the Local Government may assign such salaries as such Government deems proper to the registering officers appointed under this Act, or provide for their remuneration by fees, or partly by fees and partly by salaries.

(2) The Local Government may allow proper establishments for the several offices under this Act.

15. The several Registrars and Sub-Registrars shall use a seal bearing the following inscription in English and in such other language as the Local Government directs: "The seal of the Registrar (or Sub-Registrar) of

16. (1) The Local Government shall provide for the office of every registering officer the books necessary for the purposes of this Act.

(2) The books so provided shall contain the forms from time to time prescribed by the Inspector-General, with the sanction of the Local Government, and the pages of such books shall be consecutively numbered in print, and the number of pages in each book shall be certified on the title-page by the officer by whom such books are issued.

(3) The Local Government shall supply the office of every Registrar with a fire-proof box, and shall, in each district, make suitable provision for the safe custody of the records connected with the registration of documents in such district.

PART III.

OF REGISTRABLE DOCUMENTS.

17. (1) The following documents shall be registered, if the Documents of which registration is compulsory. property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI. of 1864 or the Indian Registration Act, 1866,* or the Indian Registration Act, 1871,† or the Indian Registration Act, 1877,‡ or this Act came or comes into force, namely,—

* Act XX. of 1866.

† Act VII. of 1871.

‡ Act III. of 1877.

(d.)—Grants with Exception.

42. Whenever the nature of the case requires that an exception be made, probate of a will or letters of administration with the will annexed, shall be granted, subject to such exception.

Probate or administration, with will annexed, subject to exception.

43. Whenever the nature of the case requires that an exception be made, letters of administration shall be granted, subject to such exception.

Administration with exception.

(e.)—Grants of the Rest.

44. Whenever a grant, with exception of probate or letters of administration, with or without the will annexed, has been made, the person entitled to probate or administration of the remainder of the deceased's estate, may take a grant of probate or letters of administration, as the case may be, of the rest of the deceased's estate.

Probate or administration of the rest.

(f.)—Grants of Effects unadministered.

45. If the executor to whom probate has been granted has died leaving a part of the testator's estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate.

Grant of effects unadministered.

46. In granting letters of administration of an estate not fully administered, the Court shall be guided by the same rules as apply to original grants, and shall grant letters of administration to those persons only to whom original grants might have been made.

Rules as to grants of effects unadministered.

47. When a limited grant has expired by effluxion of time, or the happening of the event or contingency on which it was limited, and there is still some part of the deceased's estate unadministered, letters of administration shall be granted to those persons to whom original grants might have been made.

Administration when limited grant expired, and still some part of estate unadministered.

in immoveable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit, or extinguish any such right, title, or interest; or

- (vi) any decree or order of a Court and any award; or
- (vii) any grant of immoveable property by Government; or
- (viii) any instrument of partition made by a Revenue-officer; or
- (ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871,* or the Land Improvement Loans Act, 1883;† or
- (x) any order granting a loan under the Agriculturists' Loans Act, 1884,‡ or instrument for securing the repayment of a loan made under that Act; or
- (xi) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or
- (xii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue Officer.

(3) Authorities to adopt a son, executed after the first day of January 1872, and not conferred by a will, shall also be registered.

Documents of which registration is optional.

18. Any of the following documents may be registered under this Act, namely,—

- (a) instruments (other than instruments of gift and wills) which purport or operate to create, declare, assign, limit, or extinguish, whether in present or in future, any right, title, or interest, whether vested or contingent, of a value less than one hundred rupees, to or in immoveable property;

* Act XXVI of 1871.

‡ Act XII. of 1884.

† Act XIX. of 1883.

(b) The grant was made without citing parties who ought to have been cited.

(c) The will of which probate was obtained was forged or revoked

(d) A obtained letters of administration to the estate of B as his widow, but it has since transpired that she was never married to him.

(e) A has taken administration to the estate of B as if he had died intestate, but a will has since been discovered

(f.) Since probate was granted, a later will has been discovered.

(g) Since probate was granted, a codicil has been discovered, which revokes or adds to the appointment of executors under the will

(h.) The person to whom probate was, or letters of administration were, granted has subsequently become of unsound mind

CHAPTER V.

OF THE PRACTICE IN GRANTING AND REVOKING PROBATES AND LETTERS OF ADMINISTRATION.*

51. The District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his district.

52. The High Court may, from time to time, appoint such judicial officers within any district as it thinks fit to act for the District Judge as Delegates to grant probate and letters of administration in non-contentious cases within such local limits as it may, from time to time, prescribe :

Provided that, in the case of High Courts not established by Royal Charter, such appointment be made with the previous sanction of the Local Government.

Persons so appointed shall be called "District Delegates."

53. The District Judge shall have the like powers and authority in relation to the granting of probate and letters of administration, and all matters connected therewith, as are by law vested in him in relation to any civil suit or proceeding depending in his Court.

* Compare Act X of 1865, Pt. XXXI, as amended by Acts XXIII of 1875 and VI. of 1881.

situate, and by their superficial contents, the roads and other properties on which they abut, and their existing occupancies, and also, whenever it is practicable, by reference to a Government map or survey.

(4) No non-testamentary document containing a map or plan of any property comprised therein shall be accepted for registration unless it is accompanied by a true copy of the map or plan, or, in case such property is situate in several districts, by such number of true copies of the map or plan as are equal to the number of such districts.

22 (1) Where it is, in the opinion of the Local Government, practicable to describe houses not being houses in towns, and lands by reference to a Government map or survey, the Local Government may, by rule made under this Act, require that such houses and lands as aforesaid shall, for the purposes of section 21, be so described.

(2) Save as otherwise provided by any rule made under sub-section (1), failure to comply with the provisions of section 21, sub-section (2) or sub-section (3), shall not disentitle a document to be registered if the description of the property to which it relates is sufficient to identify that property.

PART IV.

OF THE TIME OF PRESENTATION.

23. Subject to the provisions contained in sections 24, 25, and 26, no document other than a will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution :

Provided that a copy of a decree or order may be presented within four months from the day on which the decree or order was made, or, where it is appealable, within four months from the day on which it becomes final.

24. Where there are several persons executing a document at different times, such document may be presented for registration and re-registration within four months from the date of each execution.

disposed of more justly or conveniently in another district, or, where the application is for letters of administration, grant them absolutely, or limited to the property within his own jurisdiction.

58. Probate and letters of administration may, upon appli-

Probate and letters of ad- cation for that purpose to any District
ministration may be granted Delegate, be granted by him in any case
by Delegate. in which there is no contention, if it
appears by petition (verified as hereinafter mentioned) that the
testator or intestate, as the case may be, at the time of his death,
had his fixed place of abode within the jurisdiction of such
Delegate.

59. Probate or letters of administration shall have effect

Conclusiveness of probate over all the property, moveable or im-
or letters of administration. moveable, of the deceased throughout
the province in which the same is or are* granted, and shall be
conclusive as to the representative title against all debtors of the
deceased and all persons holding property which belongs to him,
and shall afford full indemnity to all debtors paying their debts,
and all persons delivering up such property to the person to whom
such probate or letters of administration shall have been granted :

† "Provided that probates and letters of administration
granted—

(a) by a High Court, or

(b) by a District Judge, where the deceased at the time of
his death had his fixed place of abode situate within
the jurisdiction of such Judge, and such Judge
certifies that the value of the property affected
beyond the limits of the province does not exceed
ten thousand rupees,

shall, unless otherwise directed by the grant, have like effect
throughout the whole of British India."

60 ‡ (1) Where probates or letters of administration has or
have been granted by a Court with the effect referred to in the

* The words "or are" have been inserted by the Repealing and
Amending Act (XII of 1891)

† This proviso has been substituted for the original by Act VIII. of

1903

‡ S. 60 has been re-enacted by Act VIII. of 1903.

either in the office of the Sub-Registrar in whose sub-district the document was executed, or in the office of any other Sub-Registrar under the Local Government at which all the persons executing and claiming under the document desire the same to be registered.

(2) A copy of a decree or order may be presented for registration in the office of the Sub-Registrar in whose sub-district the original decree or order was made, or, where the decree or order does not affect immoveable property, in the office of any other Sub-Registrar under the Local Government at which all the persons claiming under the decree or order desire the copy to be registered.

30. (1) Any Registrar may in his discretion receive and register any document which might be registered by any Sub-Registrar subordinate to him.

Registration by Registrars in certain cases.

(2) The Registrar of a district including a Presidency-town and the Registrar of the Lahore District may receive and register any document referred to in section 28 without regard to the situation in any part of British India of the property to which the document relates.

31. In ordinary cases the registration or deposit of documents under this Act shall be made only at the office of the officer authorized to accept the same for registration or deposit :

Registration or acceptance for deposit at private residence.

Provided that such officer may, on special cause being shown, attend at the residence of any person desiring to present a document for registration or to deposit a will, and accept for registration or deposit such document or will.

PART VI.

OF PRESENTING DOCUMENTS FOR REGISTRATION.

32. Except in the cases mentioned in section 31 and section 89, every document to be registered under this Act, whether such registration be compulsory or optional, shall be presented at the proper registration-office,—

Persons to present documents for registration.

(a) by some person executing or claiming under the same, or, in the case of a copy of a decree or order, claiming under the decree or order, or

the time of the testator's death ;

that the writing annexed is his last will and testament, or as the case may be ;

that it was duly executed ;

the amount of assets which are likely to come to the petitioner's hands ;

and, where the application is for probate, that the petitioner is the executor named in the will.

In addition to these particulars, the petition shall further state,—

when the application is to the District Judge, that the deceased, at the time of his death, had a fixed place of abode, or had some property, situate within the jurisdiction of the Judge ; and,

when the application is to a District Delegate, that the deceased, at the time of his death, had a fixed place of abode within the jurisdiction of such Delegate.

“ When the application is to the District Judge and any portion of the assets likely to come to the petitioner's hands is situate in another Province, the petition shall further state the amount of such assets in each Province and the District Judges within whose jurisdiction such assets are situate.”*

63. In cases wherein the will, copy, or draft is written in any language other than English or in what cases translation of will to be annexed to petition. than that in ordinary use in proceedings before the Court, there shall be a translation thereof annexed to the petition by a translator of the Court, if the language be one for which a translator is appointed ; or, if the will, copy, or draft be in any other language, then by any person competent to translate the same : in which case such translation shall be verified by that person in the following manner :—

“ I, *AB*, do declare that I read and perfectly understand the language and character of the original, and that the above is a true and accurate translation thereof.”

* This para has been added by Act VIII. of 1903.

himself go to the house of the person purporting to be the principal, or to the jail in which he is confined, and examine him, or issue a commission for his examination.

(4) Any power-of-attorney mentioned in this section may be proved by the production of it without further proof when it purports on the face of it to have been executed before, and authenticated by, the person or Court hereinbefore mentioned in that behalf.

84. (1) Subject to the provisions contained in this Part, and in sections 41, 43, 45, 69, 75, 77, 88, and 89, no document shall be registered under this Act unless the persons executing such document or their representatives, assigns, or agents authorized as aforesaid, appear before the registering officer within the time allowed for presentation under sections 23, 24, 25, and 26:

Provided that, if, owing to urgent necessity or unavoidable accident, all such persons do not so appear, the Registrar, in cases where the delay in appearing does not exceed four months, may direct that, on payment of a fine not exceeding ten times the amount of the proper registration-fee, in addition to the fine, if any, payable under section 25, the document may be registered.

(2) Appearances under sub-section (1) may be simultaneous or at different times.

(3) The registering officer shall thereupon—

(a) enquire whether or not such document was executed by the persons by whom it purports to have been executed;

(b) satisfy himself as to the identity of the persons appearing before him, and alleging that they have executed the document; and,

(c) in the case of any person appearing as a representative, assign, or agent, satisfy himself of the right of such person so to appear.

(4) Any application for a direction under the proviso to sub-section (1) may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

(5) Nothing in this section applies to copies of decrees or orders.

66. The petition for probate or letters of administration shall, in all cases, be subscribed by the petitioner and his pleader, if any, and shall be verified by the petitioner in the following manner, or to the like effect:—

"I, *A B*, the petitioner in the above petition, declare that what is stated therein is true to the best of my information and belief."

67. Where the application is for probate, or for letters of administration, with the will annexed, the petition shall also be verified by at least one of the witnesses to the will (when procurable) in the manner, or to the effect, following:—

"I, *C D*, one of the witnesses to the last will and testament of the testator mentioned in the above petition, declare that I was present, and saw the said testator affix his signature (or mark) thereto (*as the case may be*) (or that the said testator acknowledged the writing annexed to the above petition to be his last will and testament in my presence)."

68. If any petition or declaration which is hereby required to be verified contains any averment which the person making the verification knows or believes to be false, such person shall be subject to punishment according to the provisions of the law* for the time being in force for the punishment of giving or fabricating false evidence.

District Judge may examine petitioner in person, **69.** In all cases it shall be lawful for the District Judge or District Delegate, if he thinks fit,

to examine the petitioner in person upon oath, and also to require further evidence of the due execution of the will or the right of the petitioner to the letters of administration, as the case may be, and require further evidence,

to issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.

* See the Indian Penal Code (Act XLV. of 1860), Ch. XI.

such officer or Court as the Local Government directs in this behalf to issue a summons requiring him to appear at the registration-office, either in person or by duly-authorized agent, as in the summons may be mentioned, and at a time named therein.

37. The officer or Court, upon receipt of the peon's fee payable in such cases, shall issue the summons accordingly, and cause it to be served upon the person whose appearance is so required.

Persons exempt from appearance at registration-office.

38. (1) (a) A person who, by reason of bodily infirmity, is unable, without risk or serious inconvenience, to appear at the registration-office, or

(b) a person in jail under civil or criminal process, or

(c) persons exempt by law from personal appearance in Court, and who would, but for the provision next hereinafter contained, be required to appear in person at the registration-office,

shall not be required so to appear.

(2) In the case of every such person, the registering officer shall either himself go to the house of such person, or to the jail in which he is confined, and examine him or issue a commission for his examination.

39. The law in force for the time being as to summonses, commissions, and compelling the attendance of witnesses, and for their remuneration in suits before Civil Courts, shall, save as aforesaid, and *mutatis mutandis*, apply to any summons or commission issued, and any person summoned to appear, under the provisions of this Act.

PART VIII.

OF PRESENTING WILLS AND AUTHORITIES TO ADOPT,

40 (1) The testator or, after his death, any person claiming as executor or otherwise under a will may present it to any Registrar or Sub-Registrar for registration.

Persons entitled to present wills and authorities to adopt.

(2) The donor or, after his death, the donee of any authority to adopt, or the adoptive son, may present it to any Registrar or Sub-Registrar for registration.

Explanation.—By “contention” is understood the appearance of any one in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf, to oppose the proceeding.

74. In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

75. In every case in which there is contention, or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any documents that may have been filed therewith, shall be returned to the person by whom the application was made in order that the same may be presented to the District Judge; unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorized to do, and, in that case, the same shall be sent by him to the District Judge.

76. Whenever it appears to the Judge or District Delegate that probate of a will should be granted, he shall grant the same under the seal of his Court in manner following:—

“I, _____, Judge of the district of _____,
 Form of such grant. [or Delegate appointed for granting probate or letters of administration in (here insert the limits of the Delegate's jurisdiction)] hereby make known that on the _____ day of _____, in the year _____, the last will of _____, late of _____,

45. (1) If, on the death of a testator who has deposited a sealed cover under section 42, application be made to the Registrar who holds it in deposit to open the same, and if the Registrar is satisfied that the testator is dead, he shall, in the applicant's presence, open the cover, and, at the applicant's expense, cause the contents thereof to be copied into his Book No. 3.

(2) When such copy has been made, the Registrar shall re-deposit the original will.

46. (1) Nothing hereinbefore contained shall affect the provisions of section 259 of the Indian Succession Act, 1865,* or of section 31 of the Probate and Administration Act, 1881,† or the power of any Court by order to compel the production of any will.

(2) When any such order is made, the Registrar shall, unless the will has been already copied under section 45, open the cover, and cause the will to be copied into his Book No. 3, and make a note on such copy that the original has been removed into Court in pursuance of the order aforesaid.

PART X.

OF THE EFFECTS OF REGISTRATION AND NON-REGISTRATION.

47. A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration.

48. All non-testamentary documents duly registered under this Act, and relating to any property, whether moveable or immovable, shall take effect against any oral agreement or declaration relating to such property, unless where the agreement or declaration has been accompanied or followed by delivery of possession.

Effect of non-registration of documents required to be registered.

49. No document required by section 17 to be registered shall—

* Act X. of 1865.

† Act V. of 1881.

*account of the said property and credits within one year from the same date, or within such further time as the Court may, from time to time, appoint.**

78. Every person to whom any grant of letters of administration is committed, and, if the Judge so direct, any person to whom probate is granted, shall give a bond to the Judge of the District Court to insure for the benefit of the Judge for the time being, with one or more surety or sureties, engaging for the due collection, getting in, and administering the estate of the deceased, which bond shall be in such form as the Judge, from time to time, by any general or special order, directs.

79. The Court may, on application made by petition and on being satisfied that the engagement of any such bond has not been kept, and upon such terms as to security, or providing that the money received be paid into Court or otherwise, as the Court may think fit, assign the same to some proper person, who shall thereupon be entitled to sue on the said bond in his own name as if the same had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon, as trustee for all persons interested, the full amount recoverable in respect of any breach thereof.

80. No probate of a will shall be granted until after the expiration of seven clear days, and no letters of administration shall be granted until after the expiration of fourteen clear days, from the day of the testator or intestate's death.

81. Until a public registry for wills is established, every District Judge and District Delegate shall file and preserve, among the records of his Court, all original wills of which probate or letters of administration, with the will annexed, may be granted by him; and the Local Government

* The italicized words ending s. 77 have been substituted for the words "he having undertaken to administer the same and to make a true inventory of the said property and credits, and to exhibit the same in this Court at or before the expiration of six months from the date of this grant, and also to render a true account of the said property and credits within one year from the same date," by the Probate and Administration Act (VI. of 1889), s. 13.

Book 2—"Record of Reasons for Refusal to register;"

Book 3—"Register of Wills and Authorities to adopt;" and

Book 4—"Miscellaneous Register:"

B.—In the offices of Registrars—

Book 5—"Register of Deposits of Wills."

(2) In Book 1 shall be entered or filed all documents or memoranda registered under sections 17, 18, and 89, which relate to immoveable property, and are not wills.

(3) In Book 4 shall be entered all documents registered under clauses (d) and (f) of section 18, which do not relate to immoveable property.

(4) Nothing in this section shall be deemed to require more than one set of books where the office of the Registrar has been amalgamated with the office of a Sub-Registrar.

52. (1) (a) The day, hour, and place of presentation, and the signature of every person presenting a document for registration, shall be endorsed on every such document at the time of presenting it;

(b) a receipt for such document shall be given by the registering officer to the person presenting the same; and,

(c) subject to the provisions contained in section 62, every document admitted to registration shall, without unnecessary delay, be copied in the book appropriated therefor according to the order of its admission.

(2) All such books shall be authenticated at such intervals and in such manner as is from time to time prescribed by the Inspector-General.

53. All entries in each book shall be numbered in a consecutive series which shall commence and terminate with the year, a fresh series being commenced at the beginning of each year.

54. In every office in which any of the books hereinbefore mentioned are kept, there shall be prepared current indexes of the contents of such books; and every entry in such indexes shall be made, so far as practicable, immediately after the registering officer has copied, or filed a memorandum of, the document to which it relates.

of the Court to make an order refusing, for reasons to be recorded by it in writing, to grant any application for letters of administration made under this Act.

86. Every order made by a District Judge or District Delegate Appeals from orders of Dis- by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court under the rules contained in the Code of Civil Procedure* applicable to appeals.

87. The High Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge.

CHAPTER VI.

OF THE POWERS OF AN EXECUTOR OR ADMINISTRATOR.†

88. An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and may exercise the same powers for the recovery of debts due to him at the time of his death, as the deceased had when living.

89. All demands whatsoever, and all rights to prosecute or defend any suit or other proceeding, existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators, except causes of action for defamation, assault as defined in the Indian Penal Code, or other personal injuries not causing the death of the party, and except also cases where, after the death of the party, the relief sought could not be enjoyed, or granting it would be nugatory.

Illustration.

A collision takes place on a railway in consequence of some neglect or default of the officials, and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having instituted any suit. The cause of action does not survive.

* See now Act XIV. of 1882.

† Compare Act X. of 1865, Pt. XXXIII.

persons executing the documents to which such entries relate, or to their agents, and, after the death of the executants (but not before), to any person applying for such copies.

(3) Subject to the same provisions, copies of entries in Book No. 4, and in the Index relating thereto, shall be given to any person executing or claiming under the documents to which such entries respectively refer, or to his agent or representative.

(4) The requisite search under this section for entries in Books Nos. 3 and 4 shall be made only by the registering officer.

(5) All copies given under this section shall be signed and sealed by the registering officer, and shall be admissible for the purpose of proving the contents of the original documents.

(B)—*As to the Procedure on admitting to Registration.*

58. (1) On every document admitted to registration, other than a copy of a decree or order, or a copy sent to a registering officer under section 89, there shall be endorsed from time to time the following particulars, namely—

Particulars to be endorsed on documents admitted to registration.

(a) the signature and addition of every person admitting the execution of the document, and, if such execution has been admitted by the representative, assign, or agent of any person, the signature and addition of such representative, assign, or agent;

(b) the signature and addition of every person examined in reference to such document under any of the provisions of this Act; and

(c) any payment of money or delivery of goods made in the presence of the registering officer in reference to the execution of the document, and any admission of receipt of consideration, in whole or in part, made in his presence in reference to such execution.

(2) If any person admitting the execution of a document refuses to endorse the same, the registering officer shall nevertheless register it, but shall at the same time endorse a note of such refusal.

59. The registering officer shall affix the date and his signature to all endorsements made under sections 52 and 58 relating to the same document, and made in his presence on the same day.

Endorsements to be dated and signed by registering officer.

92 When there are several executors or administrators, the Powers of several executors or administrators exercisable by one. powers of all may, in the absence of any direction to the contrary in the will or grant of letters of administration, be exercised by any one of them who has proved the will or taken out administration.

Illustrations.

(a) One of several executors has power to release a debt due to the deceased.

(b) One has power to surrender a lease

(c) One has power to sell the property of the deceased, moveable or immoveable.

(d) One has power to assent to a legacy.

(e) One has power to endorse a promissory note payable to the deceased

(f) The will appoints A, B, C, and D, to be executors, and directs that two of them shall be a quorum. No act can be done by a single executor.

93 Upon the death of one or more of several executors or administrators, all the powers of the office become, in the absence of any direction to the contrary in the will or grant of letters of administration, vested in the survivors or survivor.

94. The administrator of effects unadministered has, with respect to such effects, the same powers as the original executor or administrator.

Powers of administrator during minority.

95. An administrator during minority has all the powers of an ordinary administrator.

96. When probate or letters of administration shall have been granted to a married woman, she has all the powers of an ordinary executor or administrator.

Powers of married executrix or administratrix.

of 1908.]

REGISTRATION.

which such person is not acquainted) interpreted to him in a language with which he is acquainted, and, if he admits the correctness of such note, it shall be signed by the registering officer.

(g) Every such note so signed shall be admissible for the purpose of proving that the statements therein recorded were made by the persons and under the circumstances therein stated.

(C)—*Special Duties of Sub-Registrar.*

64. Every Sub-Registrar, on registering a non-testamentary document relating to immoveable property not wholly situate in his own sub-district, shall make a memorandum thereof, and of the endorsement and certificate (if any) thereon, and send the same to every other Sub-Registrar subordinate to the same Registrar as himself in whose sub-district any part of such property is situate, and such Sub-Registrar shall file the memorandum in his Book No. 1.

65. (1) Every Sub-Registrar, on registering a non-testamentary document relating to immoveable property situate in more districts than one, shall also forward a copy thereof, and of the endorsement and certificate (if any) thereon, together with a copy of the map or plan (if any) mentioned in section 21, to the Registrar of every district in which any part of such property is situate other than the district in which his own sub-district is situate.

(2) The Registrar, on receiving the same, shall file in his Book No. 1 the copy of the document and the copy of the map or plan (if any), and shall forward a memorandum of the document to each of the Sub-Registrars subordinate to him within whose sub-district any part of such property is situate: and every Sub-Registrar receiving such memorandum shall file it in his Book No. 1.

(D)—*Special Duties of Registrar.*

66. (1) On registering any non-testamentary document relating to immoveable property, the Registrar shall forward a memorandum of such document to each Sub-Registrar subordinate to himself in whose sub-district any part of the property is situate.

99. In all cases where *a grant has been made** of probate or letters of administration intended to have effect throughout the whole of British India, the executor or administrator* shall include in the inventory of the effects of the deceased all his moveable or immoveable property situate in British India;

and the value of such property situate in each province shall be separately stated in such inventory; and the probate or letters of administration shall be chargeable with a fee corresponding to the entire amount or value of the property affected thereby, where-soever situate within British India.

100. The executor or administrator shall collect, with reasonable diligence, the property of the deceased and the debts that were due to him at the time of his death.

101. Funeral expenses to a reasonable amount, according to the degree and quality of the deceased, Expenses to be paid before all debts. and death-bed charges, including fees for medical attendance, and board and lodging for one month previous to his death, are to be paid before all debts.

102. The expenses of obtaining probate or letters of administration, including the costs incurred Expenses to be paid next after such expenses for, or in respect of, any judicial proceedings that may be necessary for administering the estate, are to be paid next after the funeral expenses and death-bed charges.

103. Wages due for services rendered to the deceased within three months next preceding his death Wages for certain services to be next paid, and then other debts. by any labourer, artisan, or domestic servant, are next to be paid, and then the other debts of the deceased, according to their respective priorities (if any).

104. Save as aforesaid, no creditor is to have a right of priority over another.

* In s 99, the italicized words "a grant has been made" have been substituted for the words, "it is sought to obtain a grant," by the Probate and Administration Act (VI of 1839), s 16, and the italicized word "Administrator" has been substituted for the words "the person applying for administration," by the same Act and section.

- (b) declaring what languages shall be deemed to be commonly used in each district;
 - (c) declaring what territorial divisions shall be recognized under section 21;
 - (d) regulating the amount of fines imposed under sections 25 and 34, respectively;
 - (e) regulating the exercise of the discretion reposed in the registering-officer by section 63;
 - (f) regulating the form in which registering-officers are to make memoranda of documents;
 - (g) regulating the authentication by Registrars and Sub-Registrars of the books kept in their respective offices under section 51;
 - (h) declaring the particulars to be contained in Indexes No. I., II., III., and IV., respectively;
 - (i) declaring the holidays that shall be observed in the registration-offices; and,
 - (j) generally, regulating the proceedings of the Registrars and Sub-Registrars.
- (2) The rules so made shall be submitted to the Local Government for approval, and, after they have been approved, they shall be published in the official gazette, and, on publication, shall have effect as if enacted in this Act.

70. The Inspector-General may also, in the exercise of his discretion, remit, wholly or in part, the difference between any fine levied under section 25 or section 34 and the amount of the proper registration-fee.

PART XII.

OF REFUSAL TO REGISTER.

71. (1) Every Sub-Registrar refusing to register a document, except on the ground that the property to which it relates is not situate within his sub-district, shall make an order of refusal, and record his reasons for such order in his Book No. 2, and endorse the words "registration refused" on the document; and, on application made by any

Illustration.

A has bequeathed to B a diamond ring, valued at 500 rupees, and to C a horse, valued at 1,000 rupees. It is found necessary to sell all the effects of the testator, and his assets, after payment of debts, are only 1,000 rupees. Of this sum, Rupees 333 5-4 are to be paid to B, and Rupees 666-10 8 to C.

111. For the purpose of abatement, a legacy for life, a sum appropriated by the will to produce an annuity, and the value of an annuity when no sum has been appropriated to produce it, shall be treated as general legacies.

CHAPTER VIII.

OF THE EXECUTOR'S ASSENT TO A LEGACY.*

Assent necessary to complete legatee's title.

112. The assent of the executor is necessary to complete a legatee's title to his legacy.

Illustrations.

(a) A, by his will, bequeaths to B his Government Paper, which is in deposit with the Bank of Bengal. The Bank has no authority to deliver the securities, nor B a right to take possession of them, without the assent of the executor.

(b) A, by his will, has bequeathed to C his house in Calcutta in the tenancy of B. C is not entitled to receive the rents without the assent of the executor.

113. The assent of the executor to a specific bequest shall be sufficient to divest his interest as executor therein, and to transfer the subject of the bequest to the legatee, unless the nature or the circumstances of the property require that it shall be transferred in a particular way.

This assent may be verbal, and it may be either express or implied from the conduct of the executor.

* Compare Act X of 1865, Pt XXXV. The provisions in Ch VIII. as to an executor apply also to an administrator with the will annexed — See s. 140, *infra*.

- (b) whether the requirements of the law for the time being in force have been complied with on the part of the applicant or person presenting the document for registration, as the case may be, so as to entitle the document to registration.

75. (1) If the Registrar finds that the document has been executed, and that the said requirements have been complied with, he shall order the document to be registered.

(2) If the document is duly presented for registration within thirty days after the making of such order, the registering officer shall obey the same, and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59, and 60.

(3) Such registration shall take effect as if the document had been registered when it was first duly presented for registration.

(4) The Registrar may, for the purpose of any enquiry under section 74, summon and enforce the attendance of witnesses, and compel them to give evidence, as if he were a Civil Court, and he may also direct by whom the whole or any part of the costs of any such enquiry shall be paid, and such costs shall be recoverable as if they had been awarded in a suit under the Code of Civil Procedure, 1908.*

Order of refusal by Registrar.

76. (1) Every Registrar refusing—

(a) to register a document except on the ground that the property to which it relates is not situate within his district, or that the document ought to be registered in the office of a Sub-Registrar, or

(b) to direct the registration of a document under section 72 or section 75,

shall make an order of refusal, and record the reasons for such order in his Book No. 2, and, on application made by any person executing or claiming under the document, shall, without unnecessary delay, give him a copy of the reasons so recorded.

(2) No appeal lies from any order by a Registrar under this section or section 72.

77. (1) Where the Registrar refuses to order the document to be registered, under section 72 or section 76, any person claiming under

Suit in case of order of refusal by Registrar.

* Act V. of 1908.

Effect of executor's assent.

116. The assent of the executor to a legacy gives effect to it from the death of the testator.

Illustrations.

(a) A legatee sells his legacy before it is assented to by the executor. The executor's subsequent assent operates for the benefit of the purchaser, and completes his title to the legacy.

(b) A bequeaths 1,000 rupees to B, with interest from his death. The executor does not assent to this legacy until the expiration of a year from A's death. B is entitled to interest from the death of A.

117. An executor is not bound to pay or deliver any legacy until the expiration of one year from the testator's death.

Executor when to deliver legacies.

Illustration.

A by his will directs his legacies to be paid within six months after his death. The executor is not bound to pay them before the expiration of a year.

CHAPTER IX.

OF THE PAYMENT AND APPORTIONMENT OF ANNUITIES *

118. Where an annuity is given by the will, and no time is fixed for its commencement, it shall commence from the testator's death, and the first payment shall be made at the expiration of a year next after that event.

119. Where there is a direction that the annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the first quarter or first month, as the case may be, after the testator's death, and shall, if the executor think fit, be paid when due; but the executor shall not be bound to pay it till the end of the year.

* Compare Act X. of 1865, Pt. XXXVI. The provisions in Ch. IX. as to an executor apply also to an administrator with the will annexed—See s. 148, *infra*.

80 All fees for the registration of documents under this Act shall be payable on the presentation of such documents.

Fees payable on presentation.

PART XIV.

OF PENALTIES.

81. Every registering officer appointed under this Act and every person employed in his office for the purposes of this Act, who being charged with the endorsing, copying, translating, or registering of any document presented or deposited under its provisions, endorses, copies, translates, or registers such document in a manner which he knows or believes to be incorrect, intending thereby to cause, or knowing it to be likely that he may thereby cause, injury, as defined in the Indian Penal Code,* to any person, shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both.

Penalty for making false statements, delivering false copies or translations, false personation, and abetment.

82. Whoever—

- (a) intentionally makes any false statement, whether on oath or not, and whether it has been recorded or not, before any officer acting in execution of this Act, in any proceeding or inquiry under this Act; or
 - (b) intentionally delivers to a registering officer, in any proceeding under section 19 or section 21, a false copy or translation of a document, or a false copy of a map or plan; or
 - (c) falsely personates another, and, in such assumed character, presents any document, or makes any admission or statement, or causes any summons or commission to be issued, or does any other act in any proceeding or inquiry under this Act; or
 - (d) abets anything made punishable by this Act;
- shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both.

* Act XLV, of 1860.

if no such annuity can be obtained, then a sum sufficient to produce the annuity shall be invested for that purpose in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct.

124. Where a bequest is contingent, the executor is not bound to invest the amount of the legacy, but may transfer the whole residue of the estate to the residuary legatee (if any) on his giving sufficient security for the payment of the legacy, if it shall become due.

125. Where the testator has bequeathed the residue of his estate to a person for life, with a direction that it shall be invested in certain specified securities, so much of the estate as is not, at the time of his death, invested in securities of the specified kind, shall be converted into money, and invested in such securities.

126 Such conversion and investment as are contemplated by the last-preceding section shall be made at such times, and in such manner, as the executor, in his discretion, thinks fit ;

and, until such conversion and investment shall be completed, the person who would be for the time being entitled to the income of the fund when so invested shall receive interest at the rate of six per cent. per annum upon the market-value (to be completed as of the date of the testator's death) of such part of the fund as shall not yet have been so invested.

127. Where, by the terms of a bequest, the legatee is entitled to the immediate payment or possession of the money or thing bequeathed, but is a minor, and there is no direction in the will to pay it to any person on his behalf, the executor or administrator shall pay or deliver the same into the Court of the District Judge by whom, or by whose District Delegate, the probate was, or letters of administration, with the will annexed, were, granted, to the account of the legatee, unless the legatee be a ward of the Court of Wards; and, if the legatee be a ward of the Court of Wards, the legacy shall be paid into that Court to his account ;

88. (1) Notwithstanding anything herein contained, it shall not be necessary for any officer of Government, or for the Administrator-General of Bengal, Madras, or Bombay, or for any Official Trustee or Official Assignee, or for the Sheriff, Receiver, or Registrar of a High Court, to appear in person or by agent at any registration-office in any proceeding connected with the registration of any instrument executed by him in his official capacity, or to sign as provided in section 58.

(2) Where any instrument is so executed, the registering officer to whom such instrument is presented for registration may, if he thinks fit, refer to any Secretary to Government, or to such officer of Government, Administrator-General, Official Trustee, Official Assignee, Sheriff, Receiver, or Registrar, as the case may be, for information respecting the same, and, on being satisfied of the execution thereof, shall register the instrument.

89. (1) Every officer granting a loan under the Land Improvement Loans Act, 1883,* shall send a copy of his order to the registering officer within the local limits of whose jurisdiction the whole or any part of the land to be improved, or of the land to be granted as collateral security, is situate; and such registering officer shall file the copy in his Book No. 1.

(2) Every Court granting a certificate of sale of immoveable property under the Code of Civil Procedure, 1908,† shall send a copy of such certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the immoveable property comprised in such certificate is situate, and such officer shall file the copy in his Book No. 1.

(3) Every officer granting a loan under the Agriculturists' Loans Act, 1884,‡ shall send a copy of any instrument whereby immoveable property is mortgaged for the purpose of securing the repayment of the loan, and, if any such property is mortgaged for the same purpose in the order granting the loan, a copy also of that order, to the registering officer within the local limits of whose jurisdiction the whole or any part of the property so mort-

* Act XIX. of 1883.

† Act XII. of 1908.

‡ Act V. of 1884.

fund bequeathed between the death of the testator and the vesting of the legacy.

Such income goes as undisposed of.

Illustrations.

(a) The testator bequeaths the residue of his property to a minor, to be paid to him when he shall complete the age of 18. The income from the testator's death belongs to A.

(b.) The testator bequeaths the residue of his property to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the residue. The income which has accrued in respect of it since the testator's death goes as undisposed of.

130. Where no time has been fixed for the payment of a general legacy, interest begins to run from the expiration of one year from the testator's death.

Interest when no time fixed for payment of general legacy.

Exceptions.—(1) Where the legacy is bequeathed in satisfaction of a debt, interest runs from the death of the testator.

(2) Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, the legacy shall bear interest from the death of the testator.

(3) Where a sum is bequeathed to a minor with a direction to pay for his maintenance out of it, interest is payable from the death of the testator.

131. Where a time has been fixed for the payment of a general legacy, interest begins to run from the time so fixed.

Interest when time fixed.

The interest up to such time forms part of the residue of the testator's estate.

Exception—Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, and the legatee is a minor, the legacy shall bear interest from the death of the testator, unless a specific sum is given by the will for maintenance, or unless the will contains a direction to the contrary.

Rate of interest.

132. The rate of interest shall be six per cent. per annum.

(2) All such documents and maps shall, for the purposes of sections 48 and 49, be deemed to have been and to be registered in accordance with the provisions of this Act.

91. Subject to such rules and the previous payment of such inspection and copies of fees as the Local Government prescribes such documents. in this behalf, all documents and maps mentioned in section 90, clauses (a), (b), (c), and (e), and all registers of the documents mentioned in clause (d), shall be open to the inspection of any person applying to inspect the same, and, subject as aforesaid, copies of such documents shall be given to all persons applying for such copies.

92. All rules relating to registration enforced in Lower Burma prior to the commencement of the Indian Registration Act, 1877,* shall be deemed to have had the force of law, and no suit or other proceeding shall be maintained against any officer or other person in respect of anything done under any of the said rules.

Repeals.

93. (1) The enactments mentioned in the schedule are repealed to the extent specified in the fourth column thereof.

(2) Nothing herein contained shall be deemed to affect any provision of any enactment in force in any part of British India, and not hereby expressly repealed.

* Act III. of 1877.

performed within the time specified, unless the performance of it be prevented by fraud: in which case such further time shall be allowed as is requisite to make up for the delay caused by such fraud.

138. When the executor has paid away the assets in legacies, and he is afterwards obliged to discharge a debt of which he had no previous notice, he is entitled to call upon each legatee to refund in proportion.

139.* Where an executor or administrator has given such notices as the High Court may, by any general rule to be made from time to time, prescribe for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets to, or any part thereof in discharge of, such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he has not had notice at the time of such distribution,

but nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets or any part thereof in the hands of the persons who may have received the same respectively.

140.* A creditor who has not received payment of his debt may call upon a legatee who has received payment of his legacy to refund, whether the assets of the testator's estate were or were not sufficient at the time of his death to pay both debts and legacies and whether the payment of the legacy by the executor was voluntary or not.

141. If the assets were sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, or who has been compelled to refund, under the last-preceding section, cannot oblige one who has received payment in full to refund, whether the legacy were paid to him with or without suit, although

* For limitation of suits to compel a refund under ss. 139 and 140, see the Indian Limitation Act (XV. of 1877), Sch. II., No. 43.

having discharged, at the expiration of the time therein named, such lawful claims as he knows of, may, instead of himself distributing any surplus or residue of the deceased's property to persons residing out of British India, who are entitled thereto, transfer, with the consent of the executor or administrator, as the case may be, in the country of domicile, the surplus or residue to him for distribution to those persons.

CHAPTER XIII.

OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR FOR DEVASTATION.*

146. When an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned.

Illustrations.

(a) The executor pays out of the estate an unfounded claim. He is liable to make good the loss caused by the payment.

(b) The deceased had a valuable lease renewable by notice, which the executor neglects to give at the proper time. The executor is liable to make good the loss caused by the neglect.

(c) The deceased had a lease of less value than the rent payable for it, but terminable on notice at a particular time. The executor neglects to give the notice. He is liable to make good the loss.

147. When an executor or administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he is liable to make good the amount.

Illustrations.

(a) The executor absolutely releases a debt due to the deceased from a solvent person, or compounds with a debtor who is able to pay in full. The executor is liable to make good the amount so lost.

(b) The executor neglects to sue for a debt till the debtor is able to plead the Act for the limitation of suits,† and the debt is thereby lost to the estate. The executor is liable to make good the amount of the debt.

* Compare Act X. of 1865, Pt XL.

† See Act XV. of 1877.

ACT XX. OF 1863

(The Religious Endowments Act, 1863).*

RECEIVED THE G.G.'S ASSENT ON THE 10TH MARCH 1863.

An Act to enable the Government to divest itself of the Management of Religious Endowments.

WHEREAS it is expedient to relieve the Boards of Revenue and the Local Agents, in the Presidency of Fort William in Bengal and the Presidency of Fort Saint George, from the duties imposed on them.

* This short title has been given by the Indian Short Titles Act (XIV. of 1897)

For the Statement of Objects and Reasons of the Bill which became Act XX. of 1863, see *Calcutta Gazette*, 1862, p. 753; for Proceedings in Council relating to the Bill, see *ibid*, Supplement, p. 28, and *ibid*, 1863, p. 105.

Act XX. of 1863 has been extended to Kanara by Bom. Act VII. of 1865, which was specially passed for that purpose.

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts, namely:—

- (1) The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singbhum (see *Gazette of India*, 1881, Pt. I., p. 504):
- (2) The scheduled portion of the Mirzapur District (see *Gazette of India*, 1879, Pt. I., p. 383):
- (3) Jaunsar Bawar (see *Gazette of India*, 1879, Pt. I., p. 382):
- (4) The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, and Dera Ghazi Khan (see *Gazette of India*, 1886, Pt. I., p. 361):
- (5) The Chief Commissionership of Assam (except the North Lushai Hills) (see *Gazette of India*, 1897, Pt. I., p. 299).

It has been extended, by notification under s. 5 of the last-mentioned Act, to the following Scheduled Districts, namely:—

- (1) Kumaon and Garhwāl (see *Gazette of India*, 1876, Pt. I., p. 606):
- (2) The North-Western Provinces Tarai (see *Gazette of India*, 1876 Pt. I., p. 505):
- (3) Ajmere and Merwara (see *Gazette of India*, 1877, Pt. I., p. 605).

S. 22 applies to the whole of British India.

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certificate regarding such property is pending, the person to whom such grant is made shall, on applying to the Court in which such suit or proceeding is pending, be entitled to take the place of such holder in such suit or proceeding:

Provided that, when any certificate is superseded under this section, all payments made to the holder of such certificate in ignorance of such supersession shall be held good against claims under the probate or letters of administration.

153. [*Amendment of Court Fees Act (VII. of 1870)*] *Repealed by the Succession Certificate Act (VII. of 1889).*

Amendment of Hindu Wills Act, 1870.

154. The following amendments shall be made in the Hindu Wills Act, 1870,* (namely).—

(a) For the portion of section 2 commencing with the words "section 179," and ending with the words, "administrator with the will annexed," the words, "and section 187," shall be substituted.

(b.) The third clause of section 3 and the last clause of section 6 shall be repealed.

(c.) In section 6, for the words "one hundred and three and one hundred and eighty-two," the words "and one hundred and three," shall be substituted.

155. All grants of probate of the will or letters of administration to the estate of any deceased Hindu, Muhammadan, or Buddhist, or any person exempted under section 333 of the Indian Succession Act, 1865,† which, before this Act comes into force, have been made in British Burma,‡ shall, whenever such grant would have been lawful if this Act had been in force, be deemed to have been made in accordance with law.

156. In the second schedule to the Indian Limitation Act, 1877 § No. 43, after the figures, "321," the following shall be inserted, namely—"or under the Probate and Administration Act, 1881, section 139, or 140."

* See Act XXI. of 1870.

† Act X. of 1865

‡ Read now "Lower Burma" See the Upper Burma Laws Act (XX. of 1886), s. 4

§ Act XV. of 1877.

of 1863.]

RELIGIOUS ENDOWMENTS.

in respect of any property which is specially provided for under section 21 of this Act.

8. The members of the said committee shall be appointed from among persons professing the religion for the purposes of which the mosque, temple, or other religious establishment was founded or is now maintained, and in accordance, so far as can be ascertained, with the general wishes of those who are interested in the maintenance of such mosque, temple, or other religious establishment.

The appointment of the committee shall be notified in the official Gazette.

In order to ascertain the general wishes of such persons in respect of such appointment, the Local Government may cause an election to be held under such rules (not inconsistent with the provisions of this Act) as shall be framed by such Local Government.*

9. Every member of a committee appointed as above shall hold his office for life unless removed for misconduct or unfitness;

and no such member shall be removed except by an order of the Civil Court as hereinafter provided.

10. Whenever any vacancy shall occur among the members of a committee appointed as above, a new member shall be elected to fill the vacancy by the persons interested as above provided.

The remaining members of the committee shall, as soon as possible, give public notice of such vacancy, and shall fix a day, which shall not be later than three months from the date of such vacancy, for an election of a new member by the persons interested as above provided, under rules for elections which shall be framed by the Local Government.†

* For rules made under this section for Madras, see p. 7 of the Madras List of Local Rules and Orders, Ed. 1894.

† For rules under this section for the N.-W. P., see the N.-W. P. Oudh List of Local Rules and Orders, Ed. 1894, p. 32.

SECTIONS.

- 42. Power to annul adjudication of insolvency.
- 43. Duties of debtors.
- 44. Discharge
- 45. Effect of order of discharge.
- 46. Appeals.
- 47. General powers of Courts.
- 48. Summary administration.
- 49. Costs.
- 50. Courts to be auxiliary to each other.
- 51. Power to make rules.

SECTIONS.

- 52. Delegation of powers to Official Receivers.
- 53. Undischarged insolvent obtaining credit.
- 54. Power of Local Government to bar application of certain provisions to certain Courts.
- 55. Savings
- 56. Repeals.

THE SCHEDULE.ENACTMENTS REPEALED

13. It shall be the duty of every trustee, manager, and
 Duty of trustee, &c., as superintendent of a mosque, temple, or
 to accounts; religious establishment to which the
 provisions of this Act shall apply to keep regular accounts of his
 receipts and disbursements in respect of the endowments and
 expenses of such mosque, temple, or other religious establishment;

and it shall be the duty of every committee of management,
 appointed or acting under the authority
 and of committee. of this Act, to require from every trustee,
 manager, and superintendent of such mosque, temple, or other
 religious establishment, the production of such regular accounts of
 such receipts and disbursements at least once in every year; and
 every such committee of management shall themselves keep such
 accounts thereof.

14. Any person or persons interested in any mosque, temple,
 Person interested may or religious establishment, or in the
 singly sue in case of breach performance of the worship or of the
 of trust &c. service thereof, or the trusts relating
 thereto, may, without joining as plaintiff any of the other per-
 sons interested therein, sue before the Civil Court the trustee,
 manager, or superintendent of such mosque, temple, or religious
 establishment, or the member of any committee appointed under
 this Act, for any misfeasance, breach or trust, or neglect of duty,
 committed by such trustee, manager, superintendent, or member
 of such committee, in respect of the trusts vested in, or confided to,
 them respectively;

and the Civil Court may direct the specific performance of
 any act by such trustee, manager,
 Powers of Civil Court. superintendent, or member of a com-
 mittee,

and may decree damages and costs against such trustee-
 manager, superintendent, or member of a committee,

and may also direct the removal of such trustee, manager,
 superintendent, or member of a committee.

15. The interest required in order to entitle a person to sue
 Nature of interest entit- under the last-preceding section need
 ling person to sue. not be a pecuniary or a direct or im-
 mediate interest, or such an interest as would entitle the person
 suing to take any part in the management or superintendence of
 the trusts.

SECTIONS. (e) "property" includes any property over which or the profits of which any person has a disposing power which he may exercise for his own benefit.

42. Pr (f) "secured creditor" includes a landlord who, under any enactment for the time being in force, has a charge on land for the rent of that land ; and

(g) "the Court" means the Court exercising jurisdiction under this Act.

(2) Save as herein otherwise provided, all words and expressions defined in the Code of Civil Procedure* shall have the same meanings as those respectively assigned to them in the said Code.*

Insolvency-jurisdiction. 8. (1) The District Courts shall be the Courts having jurisdiction under this Act

Provided that the Local Government may, with the previous sanction of the Governor-General in Council, by notification in the local official Gazette, invest any Court subordinate to a District Court with jurisdiction in any class of cases, and any Court so invested shall, within the local limits of its jurisdiction, have concurrent jurisdiction with the District Court under this Act.

(2) For the purposes of this Act, a Court of Small Causes shall be deemed to be subordinate to the District Court.

Acts of insolvency. 4. A debtor commits an act of insolvency in each of the following cases, namely—

- (a) if, in British India or elsewhere, he makes a transfer of his property to a third person for the benefit of his creditors generally ;
- (b) if, in British India or elsewhere, he makes a transfer of his property, or of any part thereof, with intent to defeat or delay his creditors ;
- (c) if, in British India or elsewhere, he makes any transfer of his property, or of any part thereof, or of any interest therein, which would, under this or any other enactment for the time being in force, be void as a fraudulent preference if he were adjudged an insolvent ;

If the Court shall be of opinion that the suit has been for the benefit of the trust, and that no party to the suit is in fault, the Court may order the costs, or such portion as it may consider just, to be paid out of the estate.

19. Before giving leave for institution of a suit, or, after leave has been given, before any proceeding is taken, or at any time when the suit is pending, the Court may require accounts of trust to be filed. The Court may order the trustee, manager, or superintendent, or any member of a committee, as the case may be, to file in Court the accounts of the trust, or such part thereof, as to the Court may seem necessary.

20. No suit or proceeding before any Civil Court under the preceding sections shall in any way affect or interfere with any proceeding in a Criminal Court for criminal breach of trust.

Cases in which endowments are partly for religious and partly for secular purposes.

21. In any case in which any land or other property has been granted for the support of an establishment partly of a religious and partly of a secular character,

or in which the endowment made for the support of an establishment is appropriated partly to religious and partly to secular uses,

the Board of Revenue, before transferring to any trustee, manager, or superintendent, or to any committee of management appointed under this Act, shall determine what portion, if any, of the said land or other property shall remain under the superintendence of the said Board for application to secular uses,

and what portion shall be transferred to the superintendence of the trustee, manager, or superintendent, or of the committee,

and also what annual amount, if any, shall be charged on the land or other property which may be so transferred to the superintendence of the said trustee, manager, or superintendent, or of the committee, and made payable to the said Board or to the local agents for secular uses as aforesaid:

In every such case the provisions of this Act shall take effect only in respect to such land and other property as may be so transferred.

for gain, or, if he has been arrested or imprisoned, where he is in custody.

(3) The debtor shall not be entitled to present an insolvency-petition unless—

- (a) his debts amount to five hundred rupees; or
- (b) he has been arrested or imprisoned in execution of the decree of any Court for the payment of money; or
- (c) an order of attachment in execution of such a decree has been made, and is subsisting, against his property.

(4) A creditor shall not be entitled to present an insolvency-petition against a debtor unless—

- (a) the debt owing by the debtor to the creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to such creditors, amounts to five hundred rupees and
- (b) the debt is a liquidated sum payable either immediately, or at some certain future time, and
- (c) the act of insolvency on which the petition is grounded has occurred within three months before the presentation of the petition.

(5) If the petitioning creditor is a secured creditor, he shall, in his petition, either state that he is willing to relinquish his security for the benefit of the creditors in the event of the debtor being adjudged insolvent, or give an estimate of the value of his security. In the latter case, he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated in the same way as if he were an unsecured creditor.

(6) No insolvency-petition shall be presented against any corporation, or against any association or company, registered under any enactment for the time being in force.

7. No petition, whether presented by a debtor, or by a creditor, shall be withdrawn without the leave of the Court.

8. Where two or more insolvency-petitions are presented against the same debtor, or where separate petitions are presented against

Withdrawal of petitions.

Consolidation of petitions.

ACT I. OF 1880. The Religious Societies Act, 1880.

RECEIVED THE G. G.'S ASSENT ON THE 9TH JANUARY 1880.

An Act to confer certain Powers on Religious Societies.

WHEREAS it is expedient to simplify the manner in which certain bodies of persons associated for purpose of maintaining religious worship may hold property acquired for such purpose, and to provide for the dissolution of such bodies and the adjustment of their affairs and for the decision of certain questions relating to such bodies: It is hereby enacted as follows:—

Short title. 1. This Act may be called "The Religious Societies Act, 1880."
Commencement. It shall come into force at once, and
Local extent. shall extend to the whole of British India;†

but nothing herein contained shall apply to any Hindus, Muhammadans or Buddhists, or to any persons whom the Governor-General in Council may from time to time, by notification in the Gazette of India, exclude from the operation of this Act.

2. When any body of persons associated for the purpose of maintaining religious worship has acquired, or hereafter shall acquire, any property,

* For Statement of Objects and Reasons, see *Gazette of India*, 1879, Part V, p. 770; for Proceedings in Council, see *ibid.*, 1879, Supplement, pp. 598, 745 and 174, *ibid.*, 1880, Supplement, pp. 23 and 170.

† Act I. of 1880 has been declared, by notification under s. 3 (a) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following scheduled districts in the Chitua Nagpore Division:—The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singhbhum.—See *Gazette of India*, Oct. 22, 1880, Pt. I., p. 594. The District of Lohardaga included at this time the present District of Palamau, which was separated in 1884.

(iii) a declaration of his willingness to place at the disposal of the Court all such property save in so far as it includes such particulars (not being his books of account) as are exempted, by the Code of Civil Procedure,* or by any other enactment for the time being in force, from liability to attachment and sale in execution of a decree.

(2) Every insolvency-petition presented by a creditor or creditors shall set forth the particulars regarding the debtor specified in clause (b) of sub-section (1), and shall also specify—

(a) the act of insolvency committed by such debtor, together with the date of its commission; and

(b) the amount and particulars of his or their pecuniary claim or claims against such debtor.

12. (1) Where an insolvency-petition is admitted, the Court shall make an order fixing a date for hearing the petition.

(2) Notice of the order under sub-section (1) shall be given to creditors by publication in the local official Gazette, and in such other manner as may be prescribed.

(3) Where the debtor is not the petitioner, notice of the order under sub-section (1) shall be served on him in the manner provided for the service of summons.

13. At the time of making the order referred to in section 12, sub-section (1), or at any subsequent time before adjudication, the Court may, either of its own motion, or on the application of any creditor, make one or more of the following orders, namely—

(1) order the debtor to give reasonable security for his appearance until final orders are made upon the petition, and direct that, in default of giving such security, he shall be detained in the civil prison.

(2) order the appointment of an interim receiver of the property of the debtor, or of any part thereof,

(3) order the attachment by actual seizure of the whole or any part of the property in the possession, or under the control, of the debtor, other than such particulars (not being his books of account) as are exempted,

ACT XXI. OF 1860

(The Societies' Registration Act, 1860).*

RECEIVED THE G. G.'s ASSENT ON THE 21ST MAY 1860.

An Act for the Registration of Literary, Scientific, and Charitable Societies.

WHEREAS it is expedient that provision should be made for improving the legal condition of societies established for the promotion of literature, science, or the fine arts, or for the diffusion of useful knowledge, or for charitable purposes; It is enacted as follows:—

1. Any seven or more persons associated for any literary, scientific, or charitable purpose, or for any such purpose as is described in section 20 of this Act, may, by subscribing their names to a memorandum of association, and filing the same

* This short title has been given by the Indian Short Titles Act (XIV. of 1897).

The Act (with the exception of the first four sections) is based on the Literary and Scientific Institutions Act, 1854 (Stat. 17 & 18 Vict, c. 112), ss. 20, *et seq.*

It has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by s. 3 of the Laws Local Extent Act (XV. of 1874).

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts, namely —

- (1) West Jalpaiguri (see *Gazette of India*, 1881, Pt. I, p. 74) ;
- (2) The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singbhum (see *Gazette of India*, 1881, Pt. I, p. 504) ;
- (3) The scheduled portion of the Mirzapur District (see *Gazette of India*, 1879, Pt. I, p. 383) ;
- (4) Jaunsar Bawar (see *Gazette of India*, 1879, Pt. I, p. 302) ;
- (5) The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, and Dera Ghazi Khan (see *Gazette of India*, 1886, Pt. I, p. 48) :

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(3) The Court shall, if sufficient cause is shown, grant time to the debtor, or to any creditor, to produce any evidence which appears to it to be necessary for the proper disposal of the petition.

(4) A memorandum of the substance of the examination of the debtor and of any other oral evidence given shall be made by the Judge, and shall form part of the record of the case.

15. (1) Where the Court is not satisfied with the proof of the right to present the petition, or of the service of notice on the debtor as required by section 12, sub-section (3), or of the alleged act of insolvency, or is satisfied by the debtor that he is able to pay his debts, or that, for any other sufficient cause, no order ought to be made, the Court shall dismiss the petition.

(2) Where a petition presented by a creditor is dismissed under sub-section (1), and the Court is satisfied that the petition was frivolous or vexatious, the Court may, on the application of the debtor, award against such creditor such amount, not exceeding one thousand rupees, as it deems a reasonable compensation to the debtor for the expense or injury occasioned to him by the petition and the proceedings thereon, and such amount may be realized as if it were a fine.

(3) An award under this section shall bar any suit for compensation in respect of such petition and the proceedings thereon.

16. (1) Where a petition is not dismissed under the preceding section, and the debtor is unable to propose any composition or scheme which shall be accepted by the creditors and approved by the Court in the manner hereinafter provided, the Court shall make an order of adjudication.

(2) On the making of an order of adjudication—

(a) the whole of the property of the insolvent, save in so far as it includes such particulars (not being his books of account) as are exempted, by the Code of Civil Procedure,* or by any other enactment for the time being in force, from liability to attachment and sale in execution of a decree, shall vest in the Court or in a receiver as hereinafter provided, and shall become divisible among the creditors, and

* Act XIV. of 1882.

list shall be filed with the Registrar of Joint-stock Companies, of the names, addresses, and occupations of the governors, council, directors, committee, or other governing body then entrusted with the management of the affairs of the society.

5. The property, moveable and immoveable, belonging to a society registered under this Act, if not vested in trustees, shall be deemed to be vested, for the time being, in the governing body of such society, and in all proceedings, civil and criminal, may be described as the property of the governing body of such society by their proper title.

6. Every society registered under this Act may sue or be sued in the name of the president, chairman, or principal secretary, or trustees, as shall be determined by the rules and regulations of the society, and, in default of such determination, in the name of such person as shall be appointed by the governing body for the occasion :

Provided that it shall be competent for any person having a claim or demand against the society to sue the president or chairman, or principal secretary, or the trustees thereof, if, on application to the governing body, some other officer or person be not nominated to be the defendant.

7. No suit or proceeding in any Civil Court shall abate or discontinue by reason of the person, by or against whom such suit or proceeding shall have been brought or continued, dying or ceasing to fill the character in the name whereof he shall have sued or been sued, but the same suit or proceeding shall be continued in the name of or against the successor of such person.

8. If a judgment shall be recovered against the person or officer named on behalf of the society, such judgment shall not be put in force against the property, moveable or immoveable, or against the body of such person or officer, but against the property of the society.

The application for execution shall set forth the judgment, the fact of the party against whom it shall have been recovered having sued or having been sued, as the case may be, on behalf of the society only, and shall require to have the judgment enforced against the property of the society.

18. (1) The Court may, at the time of the order of adjudication, or at any time afterwards, appoint a receiver for the property of the insolvent, and such property shall thereupon vest in such receiver.

(2) Subject to such conditions as may be prescribed, the Court may—

(a) require the receiver to give such security as it thinks fit duly to account for what he shall receive in respect of the property; and,

(b) by general or special order, fix the amount to be paid as remuneration for the services of the receiver out of the assets of the insolvent.

(3) Where the Court appoints a receiver, it may remove the person, in whose possession or custody any such property as aforesaid is, from the possession or custody thereof:

Provided that nothing in this section shall be deemed to authorize the Court to remove from the possession or custody of property any person whom the insolvent has not a present right so to remove.

(4) Where a receiver appointed under this section—

(a) fails to submit his accounts at such periods and in such form as the Court directs, or

(b) fails to pay the balance due from him thereon as the Court directs, or

(c) occasions loss to the property by his wilful default or gross negligence,

the Court may direct his property to be attached and sold, and may apply the proceeds to make good any balance found to be due from him or any loss so occasioned by him.

19. (1) The Local Government may appoint such persons as it thinks fit (to be called "Official Receivers") to be receivers under this Act within such local limits as it may prescribe.

(2) Where any Official Receiver has been so appointed for the local limits of the jurisdiction of any Court having jurisdiction under this Act, he shall be the receiver for the purpose of every order appointing a receiver issued by any such Court unless the Court, for special reasons, otherwise directs.

purposes, within the meaning of this Act, or to amalgamate such society, either wholly or partially, with any other society, such governing body may submit the proposition to the members of the society in a written or printed report, and may convene a special meeting for the consideration thereof according to the regulations of the society;

but no such proposition shall be carried into effect unless such report shall have been delivered or sent by post to every member of the society ten days previous to the special meeting convened by the governing body for the consideration thereof, nor unless such proposition shall have been agreed to by the votes of three-fifths of the members delivered in person or by proxy, and confirmed by the votes of three-fifths of the members present at a second special meeting convened by the governing body at an interval of one month after the former meeting.

13. Any number not less than three-fifths of the members of any society may determine that it shall be dissolved, and thereupon it shall be dissolved forthwith, or at the time then agreed upon, and all necessary steps shall be taken for the disposal and settlement of the property of the society, its claims and liabilities, according to the rules of the said society applicable thereto, if any, and, if not, then as the governing body shall find expedient:

Provided that, in the event of any dispute arising among the said governing body or the members of the society, the adjustment of its affairs shall be referred to the principal Court of original civil jurisdiction of the district in which the chief building of the society is situate; and the Court shall make such order in the matter as it shall deem requisite:

Provided that no society shall be dissolved unless three-fifths of the members shall have expressed a wish for such dissolution by their votes delivered, in person or by proxy, at a general meeting convened for the purpose:

Provided that, whenever the Government is a member of, or a contributor to, or otherwise interested in, any society registered under this Act, such society shall not be dissolved without the consent of Government.

21. (1) In any local area in which a declaration has been made under section 320* of the Code of Civil Procedure, and is in force, no sale of immoveable property paying revenue to the Government, or held or let for agricultural purposes, shall be made by the receiver; but, after the other property of the insolvent has been realized, the Court shall ascertain—

- (a) the amount required to satisfy the debts proved under this Act after deducting the moneys already received,
- (b) the immoveable property of the insolvent remaining unsold, and
- (c) the incumbrances (if any) existing thereon,

and shall forward a statement to the Collector containing the particulars aforesaid; and thereupon the Collector shall proceed to raise the amount so required by the exercise of such of the powers conferred on him by sections 322 to 325† of the said Code as he thinks fit, and subject to the provisions of those sections, so far as they are applicable, and shall hold at the disposal of the Court all sums that may come to his hands by the exercise of such powers.

(2) Nothing in this Act shall be deemed to affect any provisions of any enactment for the time being in force prohibiting or restricting the execution of decrees or orders against immoveable property; and any such provisions shall be deemed to apply to the enforcement of an order of adjudication made under this Act as if it were such a decree or order.

22. If the insolvent or any of the creditors or any other person is aggrieved by any act or decision of the receiver, he may apply to the Court, and the Court may confirm, reverse, or modify the act or decision complained of, and make such order as it thinks just:

Provided that no application under this section shall be entertained after the expiration of twenty-one days from the date of the order or decision complained of.

* This reference to s. 320 of Act XIV of 1882 (the old and now repealed Code) should now mean to apply to ss. 63, 70, and 71 of Act V. of 1908 (the new Code repealing the former *in toto*).

† Instead of these sections (322-25) of the old Code of Civil Procedure, Act XIV. of 1882 (which has entirely been repealed and replaced by the new Code, Act V. of 1908), see now the Third Schedule of the Act last mentioned.

In the case of a company or society registered under Act XLIII. of 1850,* the directors shall be deemed to be such governing body.

In the case of a society not so registered, if no such body shall have been constituted on the establishment of the society, it shall be competent for the members thereof, upon due notice, to create for itself a governing body to act for the society thenceforth.

18. In order to any such society as is mentioned in the last-
Such societies to file preceding section obtaining registry under
memorandum, &c., with this Act, it shall be sufficient that the
Registrar of Joint-stock governing body file with the Registrar of
Companies. Joint-stock Companies† a memorandum
showing the name of the society, the objects of the society, and the
names, addresses, and occupations of the governing body, together
with a copy of the rules and regulations of the society certified as
provided in section 2, and a copy of the report of the proceedings
of the general meeting at which the registration was resolved on.

19. Any person may inspect all documents filed with the
Registrar under this Act on payment of
Inspection of documents. a fee of one rupee for each inspection,
and any person may require a copy or extract of any document, or
any part of any document, to be certified by the Registrar, on pay-
ment of two annas for every hundred
Certified copies. words of such copy or extract; and such
certified copy shall be *prima-facie* evidence of the matters therein
contained in all legal proceedings whatever.

20. The following societies may be registered under this Act:
To what societies Act charitable societies, the military orphan
applies funds or societies established at the
several presidencies of India, societies established for the promotion
of science, literature, or the fine arts, for instruction, the diffusion
of useful knowledge, the foundation or maintenance of libraries or
reading-rooms for general use among the members or open to the
public, or public museums and galleries of painting and other
works of art, collections of natural history, mechanical and philoso-
phical inventions, instruments, or designs.

* Repealed by the Indian Companies Act (X. of 1866), s. 219.

† In s. 18, the words, "under Act XIX of 1857," repealed by the Repealing Act (XVI. of 1871), have here been omitted. See now the Indian Companies Act (VI. of 1882), s. 255.

(2) The Court may also, after like inquiry, expunge an entry or reduce the amount of a debt upon the application of a creditor where no receiver has been appointed, or where the receiver declines to interfere in the matter, or, in the case of a composition or scheme, upon the application of the debtor.

27. (1) Where a debtor, whether before or after the making of an order of adjudication, submits a proposal for a composition in satisfaction of his debts, or a proposal for a scheme of arrangement of his affairs, the Court shall fix a date for the consideration of the proposal, and shall issue a notice to all creditors by publication in the local official Gazette, and in such other manner as may be prescribed.

(2) If, on the consideration of the proposal, a majority in number, and three-fourths in value, of all the creditors whose debts are proved, and who are present in person or by pleader, resolve to accept the proposal, the same shall be deemed to be duly accepted by the creditors.

(3) The debtor may, at the meeting, amend the terms of his proposal if the amendment is, in the opinion of the Court, calculated to benefit the general body of creditors.

(4) Where the Court is of opinion, after hearing the report of the receiver if a receiver has been appointed, and after considering any objections which may be made by or on behalf of any creditor, that the terms of the proposal are not reasonable, or are not calculated to benefit the general body of creditors, the Court shall refuse to approve the proposal.

(5) If any facts are proved, on proof of which the Court would be required either to refuse, suspend, or attach conditions to the debtor's discharge, the Court shall refuse to approve the proposal unless it provides reasonable security for payment of not less than six annas in the rupee on all the unsecured debts provable against the debtor's estate.

(6) In any other case, the Court may either approve or refuse to approve the proposal.

(7) If the Court approves the proposal, the terms shall be embodied in an order of the Court, and the Court shall frame a schedule in accordance with the provisions of section 24, the order of adjudication (if any) shall be annulled, and the composition or scheme shall be binding on all the creditors entered in the said schedule so far as relates to any debts entered therein.

ACT III. OF 1872.*

Marriage.

RECEIVED THE G.-G.'s ASSENT ON THE 22ND MARCH 1872.

An Act to provide a Form of Marriage in certain Cases.

WHEREAS it is expedient to provide a form of marriage for persons who do not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh, or Jaina religion, and to legalize certain marriages the validity of which is doubtful: It is hereby enacted as follows:—

Local extent.

1. This Act extends to the whole of British India.

Commencement.

[*Repealed by Act XVI. of 1874.*]

2. Marriages may be celebrated under this Act between persons neither of whom professes the Christian or the Jewish, or the Hindu or the Muhammadan, or the Parsi or the Buddhist, or the Sikh or the Jaina religion, upon the following conditions:—

Conditions upon which marriages under Act may be celebrated.

- (1) neither party must, at the time of the marriage, have a husband or wife living:
- (2) the man must have completed his age of eighteen years, and the woman her age of fourteen years, according to the Gregorian calendar:
- (3) each party must, if he or she has not completed the age of twenty-one years, have obtained the consent of his or her father or guardian to the marriage:

* Act III. of 1872 has been declared in force in the Santál Parganás by Reg. III. of 1872, s. 3, as amended by Reg. III. of 1899, and in British Baluchistan by Reg. I. of 1890, s. 3.

It has been declared, by notification under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

The Districts of Házáribágh, Lohárdagá, and Mámbhum, and Parganá Dhalbhum, and the Kolhán in the District of Singbhum.—See *Gazette of India*, Oct. 22, 1881, Pt. I, p. 504.

The North-Western Provinces Tarál.—See *Gazette of India*, Sep. 29, 1876, Pt. I, p. 505.

party, and the balance of the account, and no more, shall be claimed or paid on either side respectively.

31. (1) Where a secured creditor realizes his security, he may
 Secured creditors. prove for the balance due to him after deducting the net amount realized.

(2) Where a secured creditor relinquishes his security for the general benefit of the creditors, he may prove for his whole debt.

(3) Where a secured creditor does not either realize or relinquish his security, he shall, before being entitled to have his debt entered in the schedule, state in his proof the particulars of his security, and the value at which he assesses it, and shall be entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed.

(4) Where a security is so valued, the Court may, at any time before realisation, redeem it on payment to the creditor of the assessed value.

(5) Where a creditor, after having valued his security, subsequently realizes it, the net amount realized shall be substituted for the amount of any valuation previously made by the creditor, and shall be treated in all respects as an amended valuation made by the creditor.

(6) Where a secured creditor does not comply with the provisions of this section, he shall be excluded from all share in any dividend.

32. (1) On any debt or sum certain whereon interest is not
 Interest. reserved or agreed for, and which is overdue when the debtor is adjudged an insolvent, and which is provable under this Act, the creditor may prove for interest at a rate not exceeding six per centum per annum—

(a) if the debt or sum is payable by virtue of a written instrument at a certain time, from the time when such debt or sum was payable to the date of such adjudication; or,

(b) if the debt or sum is payable otherwise, from the time when a demand in writing has been made giving the debtor notice that interest will be claimed from the date of the demand until the time of payment to the date of such adjudication.

6. Fourteen days after notice of an intended marriage has been given under section 4, such marriage may be solemnized, unless it has been previously objected to in the manner hereinafter mentioned.

Any person may object to any such marriage on the ground that it would contravene some one or more of the conditions prescribed in clause (1), (2), (3), or (4) of section 2.

The nature of the objection made shall be recorded in writing by the Registrar in the register, and shall, if necessary, be read over and explained to the person making the objection, and shall be signed by him, or on his behalf.

7. On receipt of such notice of objection, the Registrar shall not proceed to solemnize the marriage until the lapse of fourteen days from the receipt of such objection, if there be a Court of competent jurisdiction open at the time, or, if there be no such Court open at the time, until the lapse of fourteen days from the opening of such Court.

The person objecting to the intended marriage may file a suit in any Civil Court having local jurisdiction (other than a Court of Small Causes) for a declaratory decree, declaring that such marriage would contravene some one or more of the conditions prescribed in clause (1), (2), (3), or (4) of section 2.

8. The officer before whom such suit is filed shall thereupon give the person presenting it a certificate to the effect that such suit has been filed.

If such certificate be lodged with the Registrar within fourteen days from the receipt of notice of objection, if there be a Court of competent jurisdiction open at the time, or, if there be no such Court open at the time, within fourteen days of the opening of such Court, the marriage shall not be solemnized till the decision of such Court has been given, and the period allowed by law for appeals from such decision has elapsed, or, if there be an appeal from such decision, till the decision of the Appellate Court has been given.

If such certificate be not lodged in the manner and within the period prescribed in the last-preceding paragraph, or if the decision of the Court be that such marriage would not contravene any one or more of the conditions prescribed in clause (1), (2), (3), or (4) of section 2, such marriage may be solemnized.

34. (1) Where execution of a decree has issued against the Restriction of rights of property of a debtor, no person shall be creditor under execution. entitled to the benefit of the execution against the receiver except in respect of assets realized in the course of the execution by sale or otherwise before the date of the order of adjudication.

(2) Nothing in this section shall affect the rights of a secured creditor in respect of the property against which the decree is executed.

(3) A person, who, in good faith, purchases the property of a debtor under a sale in execution, shall in all cases acquire a good title to it against the receiver.

35. Where execution of a decree has issued against any property of a debtor which is saleable in decree as to property taken execution, and, before the sale thereof, in execution. notice is given to the Court executing the decree that an order of adjudication has been made against the debtor, the Court shall, on application, direct the property, if in the possession of the Court, to be delivered to the receiver, but the costs of the execution shall be a first charge on the property so delivered, and the receiver may sell the property or an adequate part thereof for the purpose of satisfying the charge.

36. Any transfer of property not being a transfer made before, Avoidance of voluntary and in consideration of, marriage, or transfer. made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, shall, if the transferor is adjudged insolvent within two years after the date of the transfer, be void against the receiver, and may be annulled by the Court.

37. (1) Every transfer of property or of any interest therein, Avoidance of preference in every payment made, every obligation certain cases. incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor, with a view of giving that creditor a preference over the other creditors, shall, if such person is adjudged insolvent on a petition presented within three months after the date thereof, be deemed fraudulent and void as against the receiver, and shall be annulled by the Court.

13A.* The Registrar shall send to the Registrar-General of

Transmission of certified copies of entries in marriage Certificate Book to the Registrar-General of Births, Deaths, and Marriages.

Births, Deaths, and Marriages† for the territories within which his district is situate, at such intervals as the Governor-General in Council, from time to time, directs, a true copy, certified by him,

in such form as the Governor-General in Council, from time to time, prescribes, of all entries made by him in the said Marriage Certificate Book since the last of such intervals.

14. The Local Government shall prescribe the fees to be paid to the Registrar for the duties to be discharged by him under this Act.

Fees.

The Registrar may, if he think fit, demand payment of any such fee before solemnization of the marriage or performance of any other duty in respect of which it is payable.

The said Marriage Certificate Book shall, at all reasonable times, be open for inspection, and shall be admissible as evidence of the truth of the statements therein contained. Certified extracts therefrom shall, on application, be given by the Registrar on the payment to him by the applicant of a fee to be fixed by the Local Government for each such extract.

15. Every person who, being at the time married, procures a marriage of himself to be solemnized under this Act, shall be deemed to have committed an offence under section 494 or section 495 of the Indian Penal Code, as the case may be; and the marriage so solemnized is void.

16. Every person married under this Act who, during the lifetime of his or her wife or husband, contracts any other marriage, shall be subject to the penalties provided in sections 494 and 495 of the Indian Penal Code for the offence of marrying again during the lifetime of a husband or wife, whatever may be the religion which he or she professed at the time of such second marriage.

Punishment of bigamy.

* S 13A has been inserted by the Births, Deaths, and Marriages Registration Act (VI of 1886), s. 29.

† As to the duty of the Registrar-General to make and keep indexes of the certified copies sent to his office under this section, see the said Act VI. of 1886, s. 7.

of any dividend declared before his debt was proved by reason that he has not participated therein.

(4) When the receiver has realized all the property of the insolvent or so much thereof as can, in the opinion of the Court, be realized without needlessly protracting the receivership, he shall declare a final dividend; but, before so doing, he shall give notice in manner prescribed to the persons whose claims to be creditors have been notified, but not proved, that, if they do not prove their claims within the time limited by the notice, he will proceed to make a final dividend without regard to their claims. After the expiration of the time so limited, or if the Court, on application by any such claimant, grants him further time for establishing his claim, then, on the expiration of such further time, the property of the insolvent shall be divided among the creditors entered in the schedule without regard to the claims of any other persons.

(5) No suit for a dividend shall lie against the receiver; but, where the receiver refuses to pay any dividend, the Court may, on the application of any creditor who is entered in the schedule, order him to pay it, and also to pay out of his own money interest thereon for the time that it is withheld and the costs of the application.

40. (1) The Court may appoint the insolvent himself to Management by, and superintend the management of the allowance to, insolvent. property of the insolvent, or of any part thereof, to carry on the trade (if any) of the insolvent for the benefit of the creditors, and in any other respect to aid in administering the property in such manner and on such terms as the Court may direct.

(2) The Court may, from time to time, make such allowance as it may think just to the insolvent out of the property for the support of himself and his family, or in consideration of his services if he is engaged in winding up his estate; but any such allowance may, at any time, be varied or determined by the Court.

41. The insolvent shall be entitled to any surplus remaining Right of insolvent to after payment in full of his creditors, surplus. with interest as provided by this Act, and of the expenses of the proceedings taken thereunder.

42. (1) Where, in the opinion of the Court, any debtor ought Power to annul adjudication of insolvency. not to have been adjudged insolvent, or where it is proved to the satisfaction of

FIRST SCHEDULE.

(See section 4.)

NOTICE OF MARRIAGE.

To _____, a Registrar of Marriages under
Act III. of 1872 for the _____ District.

I hereby give you notice that a marriage under Act III. of 1872 is intended to be had, within three calendar months from the date hereof, between me and the other party herein named and described (that is to say).—

Names.	Condition.	Rank or profession.	Age.	Dwelling place.	Length of residence.
A B	Unmarried Widower.	Landowner.	Of full age.	...	23 days.
C D	Spinster.	...	Minor.	...	...

Witness my hand, this _____ day of _____ 19 .
(Signed) A B

SECOND SCHEDULE.

(See Section 10.)

DECLARATION TO BE MADE BY THE BRIDEGROOM.

1, A B, hereby declare as follows —

1 I am at the present time unmarried :

2 I do not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh, or Jaina religion :

3. I have completed my age of eighteen years :

4. I am not related to C D [*the bride*] in any degree of consanguinity or affinity which would, according to the law to which I am subject, or to which the said C D is subject, and subject to the provisos of clause (4) of section 2 of Act III. of 1872, render a marriage between us illegal :

[*And when the bridegroom has not completed his age of twenty-one years.*]

5 The consent of my father [*or guardian, as the case may be*] has been given to a marriage between myself and C D, and has not been revoked.]

44. (1) A debtor may, at any time after the order of adjudication, apply to the Court for an order of discharge; and the Court shall fix a day, notice whereof shall be given by publication in the local official Gazette, and in such other manner as may be prescribed for hearing such application and any objections which may be made thereto.

(2) Subject to the provisions of this section, the Court may, after considering the objections of any creditor, and, where a receiver has been appointed, the report of the receiver,—

- (a) grant or refuse an absolute order of discharge; or
- (b) suspend the operation of the order for a specified time; or
- (c) grant an order of discharge subject to any conditions with respect to any earnings or income which may afterwards become due to the insolvent, or with respect to his after-acquired property.

(3) The Court shall refuse to grant an absolute order of discharge on proof of any of following facts, namely—

- (a) that the insolvent's assets are not of a value equal to eight annas in the rupee on the amount of his unsecured liabilities, unless he satisfies the Court that the fact that the assets are not of a value equal to eight annas in the rupee on the amount of his unsecured liabilities has arisen from circumstances for which he cannot justly be held responsible;
- (b) that the insolvent has omitted to keep such books of account as are usual and proper in the business carried on by him, and as sufficiently disclose his business-transactions and financial position within the three years immediately preceding his insolvency;
- (c) that the insolvent has continued to trade after knowing himself to be insolvent;
- (d) that the insolvent has contracted any debt provable under this Act without having, at the time of contracting it, any reasonable or probable ground of expectation (the burden of proving which shall lie on him) that he would be able to pay it;

THIRD SCHEDULE.

(See section 13.)

REGISTRAR'S CERTIFICATE.

I, *E F*, certify that on the _____ of _____ 18 _____ appeared before me *A B* and *C D*, each of whom, in my presence and in the presence of three credible witnesses, whose names are signed hereunder, made the declarations required by Act III. of 1872, and that a marriage under the said Act was solemnized between them in my presence.

(Signed) *E F*,

Registrar of Marriages under Act III. of 1872
for the District of _____

(Signed) *A B*,*C D*

G H,
I J, } [three witnesses].
K L, }

Dated the _____ day of _____ 18 _____

FOURTH SCHEDULE.

(See section 20.)

[Repealed by Act XII. of 1876.]

46. (1) Any person aggrieved by an order made in the exercise of insolvency-jurisdiction by a Court subordinate to a District Court may appeal to the District Court, and the order of the District Court upon such appeal shall be final :
 Appeals.

Provided that the High Court, for the purpose of satisfying itself that an order made in any appeal decided by the District Court was according to law, may call for the case and pass such order with respect thereto as it thinks fit.

(2) Any person aggrieved by an order made by the District Court under section 15, 16, 24, 26, 36, 37, 42, 43, sub-section (2), or 44, otherwise than in appeal from an order made by a subordinate Court, may appeal to the High Court.

(3) Any person aggrieved by any other order made by a District Court otherwise than in appeal from an order made by a subordinate Court may appeal to the High Court by leave of the District Court, or of the High Court.

(4) The periods of limitation for appeals to the District Court and to the High Court under this section shall be thirty days and ninety days respectively.

47. (1) Subject to the provisions of this Act, the Court, in regard to proceedings under this Act, shall have the same powers, and shall follow the same procedure, as it has and follows in the exercise of original civil jurisdiction.
 General powers of Courts.

(2) Subject as aforesaid, High Courts and District Courts, in regard to proceedings under this Act in Courts subordinate to them, shall have the same powers, and shall follow the same procedure, as they respectively have and follow in regard to civil suits.

48. When a petition is presented by or against a debtor, if the Court is satisfied by affidavit or otherwise that the property of the debtor is not likely to exceed in value five hundred rupees, the Court may make an order that the debtor's estate be administered in a summary manner, and thereupon—
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(a) the estate shall, where practicable, be distributed in a single dividend,

ACT I. OF 1877.

The Specific Relief Act.

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52. (1) The High Court, with the like sanction, may, from time to time, direct that, in any matters in respect of which jurisdiction is given to the Court by this Act, the Official Receiver shall, subject to the directions of the Court, have all or any of the following powers, namely—

- (a) to hear insolvency-petitions, to examine the debtor, and to make orders of adjudication ;
- (b) to frame schedules, and to admit or reject proofs of creditors ;
- (c) to grant orders of discharge ;
- (d) to approve compositions or schemes of arrangement ;
- (e) to make interim orders in any case of urgency,
- (f) to hear and determine any unopposed or *ex-parte* application.

(2) Subject to the appeal to the Court provided for by section 22, any order made or act done by the Official Receiver in the exercise of the said powers shall be deemed the order or act of the Court.

53 (1) An undischarged insolvent obtaining credit to the extent of fifty rupees or upwards from any person without informing such person that he is an undischarged insolvent shall, on conviction by a Magistrate, be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

(2) Where the Court has reason to believe that an undischarged insolvent has committed the offence referred to in sub-section (1), the Court, after making any preliminary inquiry that may be necessary, may send the case for trial to the nearest Magistrate of the first class, and may send the accused in custody, or take sufficient security, for his appearance before such Magistrate, and may bind over any person to appear and give evidence on such trial.

54 Any Local Government, with the previous sanction of the Governor-General in Council, may by notification in the local official Gazette, declare that the following provisions or any of them shall not apply to insolvency-proceedings in any Court or Courts having jurisdiction under this

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Year.	No.	Short title	Extent of repeal.
1872	IV.	The Punjab Laws Act, 1872 ...	Sections 22 to 32.
1877	XV.	The Indian Limitation Act, 1877.*	No. 174 of the Second Schedule.
1882	XIV.	The Code of Civil Procedure †	Section 341, clause (e), and Chapter XX. (sections 344 to 360A).
1888	VII.	The Civil Procedure Code Amendment Act, 1888.	Section 31.

* The Act has since been entirely repealed and replaced by Act IX. of 1908.

† The old Civil Procedure Code now repealed *in toto* and replaced by Act V. of 1908.

ACT I. OF 1877.*

The Specific Relief Act,

RECEIVED THE G.-G.'s ASSENT ON THE 7TH FEBRUARY 1877.

An Act to define and amend the Law relating to certain kinds of Specific Relief.

WHEREAS it is expedient to define and amend the law relating to certain kinds of specific relief obtainable in civil suits; It is hereby enacted as follows:—

Preamble.

PART I.—PRELIMINARY.

Short title. 1. This Act may be called "The Specific Relief Act, 1877."

It extends to the whole of British India, except the Scheduled Districts as defined in Act No. XIV. of 1874;

Local extent.

*Act I. of 1877 has been extended in its entirety to the following Scheduled Districts:—

AN (1) Sindh.—See *Gazette of India*, Dec. 4, 1880, Pt. I, p. 676.

(2) Western Jalpaiguri.—See *Gazette of India*, Dec. 16, 1882, Pt. I, p. 511.

(3) The Districts of Hazárbágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, in the District of Singbhum.—See *Gazette of India*, Feb. 16, 1878, Pt. I, p. 82.

(4) The Jhánsi Division.—See *Gazette of India*, Sep. 26, 1879, Pt. I, p. 592.

The Scheduled Districts of the Panjáb.—See *Gazette of India*, Sep. 22, 1877, Pt. I, p. 562.

(5) The Scheduled Districts of the Central Provinces.—See *Gazette of India*, Dec. 13, 1879, Pt. I, p. 772.

(6) Coorg.—See *Gazette of India*, June 3, 1882, Pt. I, p. 217.

(7) The Districts of Kámrup, Nagaong, Darrang, Sibságar, Lakhimpur, Goalpara (excluding the Eastern Dárárs), Silhat, and Káchár (excluding the North Káchár Hills).—See *Gazette of India*, Nov. 10, 1877, Pt. I, p. 662.

(8) The Cantonment of Morín.—See *Gazette of India*, Sep. 7, 1878, Pt. I, p. 559.

Ss. 2 and 9 of the Act have been extended to the taluqs of Bhádrachalam and Rákapilli and the Rampa Country.—See *Gazette of India*, Oct. 4, 1879, Pt. I, p. 630.

(h.) A buys land from B, having notice that C is in occupation of the land. A omits to make any inquiry as to the nature of C's interest therein. A is a trustee, within the meaning of this Act, of C, to the extent of that interest.

'settlement' means any instrument (other than a will or codicil as defined by the Indian Succession Act) whereby the destination or devolution of successive interest in moveable or immoveable property is disposed of, or is agreed to be disposed of:

and all words occurring in this Act, which are defined in the Words defined in Con- Indian Contract Act, 1872, shall be deemed to have the meanings respectively assigned to them by that Act.

Savings.

4. Except where it is herein otherwise expressly enacted, nothing in this Act shall be deemed—

(a) to give any right to relief in respect of any agreement which is not a contract;

(b) to deprive any person of any right to relief, other than specific performance, which he may have under any contract; or

(c) to affect the operation of the Indian Registration Act* on documents.

Specific relief how given.

5. Specific relief is given—

(a) by taking possession of certain property, and delivering it to a claimant;

(b) by ordering a party to do the very act which he is under an obligation to do;

(c) by preventing a party from doing that which he is under an obligation not to do;

(d) by determining and declaring the rights of parties otherwise than by an award of compensation; or

(e) by appointing a Receiver.

Preventive relief.

6. Specific relief granted under clause (c) of section 5 is called preventive relief.

* The reference to Act VIII. of 1871 is altered in accordance with Act II. of 1877, s. 2.

(2)* All Courts constituted, limits fixed, places appointed, appointments, declarations, and rules made, jurisdiction and powers conferred, forms prescribed, directions given, and notifications published, under Act No. XI. of 1865† (*an Act to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature*), or under any enactment repealed by that Act, shall, so far as may be, be deemed to have been respectively constituted, fixed, appointed, made, conferred, prescribed, given, and published under this Act.

(3) Any enactment or document referring to Act No. XI. of 1865, or to any enactment thereby repealed, shall, so far as may be, be construed to refer to this Act, or to the corresponding portion thereof.

3. Nothing in this Act shall be construed to affect—

(a) any proceedings before or after decree in any suit instituted before the commencement of this Act; or

(b) the jurisdiction of a Magistrate under any law for the time being in force with respect to debts or other claims of a civil nature, or of Village Munsifs or Village Panchayats under the provisions of the Madras Code, or of Village Munsifs under the Dekkhan Agriculturists' Relief Act, 1879; or

(c) any local law or any special law other than the Code of Civil Procedure.

4. In this Act, unless there is something repugnant in the subject or context, "Court of Small Causes" means a Court of Small Causes constituted under this Act, and includes any person exercising jurisdiction under this Act in any such Court.

* In s. 2 (2), the first word "But," having been repealed by Act XII of 1891, has been omitted.

† Act XI. of 1865 has been repealed by s. 2 (1) of this Act.

Explanation 2.—A special or temporary right to the present possession of property is sufficient to support a suit under this section.

Illustrations.

(a) A bequeaths land to B for his life, with remainder to C. A dies. B enters on the land, but C, without B's consent, obtains possession of the title-deeds. B may recover them from C.

(b) A pledges certain jewels to B to secure a loan. B disposes of them before he is entitled to do so. A, without having paid or tendered the amount of the loan, sues B for possession of the jewels. The suit should be dismissed, as A is not entitled to their possession, whatever right he may have to secure their safe custody.

(c) A receives a letter addressed to him by B. B gets back the letter without A's consent. A has such a property therein as entitles him to recover it from B.

(d) A deposits books and papers for safe custody with B. B loses them, and C finds them, but refuses to deliver them to B when demanded. B may recover them from C, subject to C's right (if any) under section 168 of the Indian Contract Act, 1872.

(e) A, a warehouse-keeper, is charged with the delivery of certain goods to Z, which B takes out of A's possession. A may sue B for the goods.

11. Any person having the possession or control of a particular article of moveable property, of which

Liability of person in possession, not as owner, to deliver to person entitled to immediate possession.

he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession in any

of the following cases :—

(a) when the thing claimed is held by the defendant as the agent or trustee of the claimant ;

(b) when compensation in money would not afford the claimant adequate relief for the loss of the thing claimed ;

(c) when it would be extremely difficult to ascertain the actual damage caused by its loss ;

(d) when the possession of the thing claimed has been wrongfully transferred from the claimant.

Illustrations.

of clause a —A, proceeding to Europe, leaves his furniture in charge of B as his agent during his absence. B, without A's authority, pledges the furniture to C, and C, knowing that B had no right to pledge the furniture, advertises it for sale. C may be compelled to deliver the furniture to A, for he holds it as A's trustee.

9. A Judge or Additional Judge of a Court of Small Causes may be suspended or removed from office by the Local Government.

10. The Local Government, after consultation with the High Court, may, by order in writing, direct that two Judges of Courts of Small Causes, or a Judge and an Additional Judge of a Court of Small Causes, shall sit together for the trial of such class or classes of suits or applications cognizable by a Court of Small Causes as may be described in the order.

11. (1) If two Judges, or a Judge and an Additional Judge, sitting together under the last-foregoing section, differ as to a question of law or usage having the force of law, or in construing a document, the construction of which may affect the merits, they shall draw up and refer, for the decision of the High Court, a statement of the facts of the case, and of the point on which they differ in opinion, and the provisions of Chapter XLVI.* of the Code of Civil Procedure shall apply to the reference.

(2) If they differ on any matter other than a matter specified in sub-section (1), the opinion of the Judge who is senior in respect of date of appointment as Judge of a Court of Small Causes, or, if one of them is an Additional Judge, then the opinion of the Judge sitting with him, shall prevail.

(3) For the purposes of sub-section (2), a Judge permanently appointed shall be deemed to be senior to an officiating Judge.

12. (1) The Local Government may appoint to a Court of Small Causes an officer to be called the Registrar.

(2) Where a Registrar is appointed, he shall be the chief ministerial officer of the Court.

(3) The Local Government may, by order in writing, confer upon a Registrar, within the local limits of the jurisdiction of the

* This reference to Ch. XLVI. of Act XIV. of 1882 (the Code of Civil Procedure in force when this Act became law, but now repealed) should now be taken as made to Order No. XLVI., together with ss. 113 and 115, of Act V. of 1908 (the Code now in force repealing the former *in toto*).—See s. 158 of the latter Act.

of clause *b*—A agrees to buy, and B agrees to sell, a picture by a dead painter and two rare China vases. A may compel B specifically to perform this contract, for there is no standard for ascertaining the actual damage which would be caused by its non-performance.

of clause *c*.—A contracts with B to sell him a house for Rs. 1,000. B is entitled to a decree directing A to convey the house to him, he paying the purchase-money.

In consideration of being released from certain obligations imposed on it by its Act of Incorporation a railway-company contract with Z to make an archway through their railway to connect lands of Z severed by the railway, to construct a road between certain specified points, to pay a certain annual sum towards the maintenance of this road, and also to construct a siding and a wharf as specified in the contract. Z is entitled to have this contract specifically enforced, for his interest in its performance cannot be adequately compensated for by money; and the Court may appoint a proper person to superintend the construction of the archway, road, siding, and wharf.

A contracts to sell and B contracts to buy, a certain number of railway-shares of a particular description. A refuses to complete the sale. B may compel A specifically to perform this agreement, for the shares are limited in number, and not always to be had in the market, and their possession carries with it the status of a shareholder, which cannot otherwise be procured.

A contracts with B to paint a picture for B, who agrees to pay therefor Rs. 1,000. The picture is painted. B is entitled to have it delivered to him on payment or tender of the Rs. 1,000.

of clause *d*.—A transfers without endorsement, but for valuable consideration, a promissory note to B. A becomes insolvent, and C is appointed his assignee. B may compel C to endorse the note, for C has succeeded to A's liabilities, and a decree for pecuniary compensation for not endorsing the note would be fruitless.

18. Notwithstanding anything contained in section 56 of the Indian Contract Act, a contract is not wholly impossible of performance because a portion of its subject-matter, existing at its date, has ceased to exist at the time of the performance.

Illustrations.

(a.) A contracts to sell a house to B for a lakh of rupees. The day after the contract is made the house is destroyed by a cyclone. B may be compelled to perform his part of the contract by paying the purchase-money.

(b.) In consideration of a sum of money payable by B, A contracts to grant an annuity to B for B's life. The day after the contract has been made, B is thrown from his horse and killed. B's representative may be compelled to pay the purchase-money.

suits of a civil nature, of which the value does not exceed five hundred rupees, shall be cognizable by a Court of Small Causes.

(3) Subject as aforesaid, the Local Government may, by order in writing, direct that all suits of a civil nature, of which the value does not exceed one thousand rupees, shall be cognizable by a Court of Small Causes mentioned in the order.

16. Save as expressly provided by this Act, or by any other enactment for the time being in force, a Court of Small Causes. suit cognizable by a Court of Small Causes shall not be tried by any other Court having jurisdiction within the local limits of the jurisdiction of the Court of Small Causes by which the suit is triable.

CHAPTER IV.

PRACTICE AND PROCEDURE.

17. (1) The procedure prescribed in the chapters and sections of the Code of Civil Procedure specified in the Second Schedule* to that Code† shall, so far as those chapters and sections are applicable, be the procedure followed in a Court of Small Causes in all suits cognizable by it, and in all proceedings arising out of such suits:

Provided that an applicant for an order to set aside a decree passed *ex parte*, or for a review of judgment, shall, at the time of presenting his application, either deposit in the Court the amount due from him under the decree, or in pursuance of the judgment, or give security to the satisfaction of the Court for the performance of the decree or compliance with the judgment, as the Court may direct.

(2) Where a person has become liable as surety under the proviso to sub-section (1), the security may be realized in manner provided by section 253‡ of the Code of Civil Procedure.

* This reference to the Second Schedule of the old and now repealed Code (Act XIV. of 1882) should now be taken as made to s. 7 and Order L. of the present Code (Act V. of 1908) now repealing the former.—See s. 158 of the latter

† Here the words, "as amended by this Act," being repealed by Act XII. of 1891, have been omitted.

‡ That is, s. 253 of Act XIV. of 1882 (the old Code), which should now mean s. 52 of Act V. of 1908 (the new Code)—See s. 158 of the latter Act.

belong to A, waiving all right to compensation either for the deficiency or for loss sustained by him through A's neglect or default, B is entitled to a decree directing A to convey those 50 bighas to him on payment of the purchase-money.

(b) A contracts to sell to B an estate with a house and garden for a lakh of rupees. The garden is important for the enjoyment of the house. It turns out that A is unable to convey the garden. A cannot obtain a decree against B for the specific performance of the contract; but, if B is willing to pay the price agreed upon, and to take the estate and house without the garden, waiving all rights to compensation either for the deficiency or for loss sustained by him through A's neglect or default, B is entitled to a decree directing A to convey the house to him on payment of the purchase-money.

16. When a part of a contract, which, taken by itself, can and ought to be specifically performed, stands independent part of contract. on a separate and independent footing from another part of the same contract which cannot or ought not to be specifically performed, the Court may direct specific performance of the former part.

17. The Court shall not direct the specific performance of a part of a contract except in cases coming under one or other of the three last preceding sections.

18. Where a person contracts to sell or let certain property, having only an imperfect title thereto, the purchaser or lessee (except as otherwise provided by this chapter) has the following rights :—

(a) if the vendor or lessor has, subsequently to the sale or lease, acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest ;

(b) where the concurrence of other persons is necessary to validate the title, and they are bound to convey at the vendor's or lessor's request, the purchaser or lessee may compel him to procure such concurrence ;

(c) where the vendor professes to sell unincumbered property, but the property is mortgaged for an amount not exceeding the purchase-money, and the vendor has, in fact, only a right to redeem it, the purchaser may compel him to redeem the mortgage, and to obtain a conveyance from the mortgagee ;

21. (1) If the Judge is absent, and an Additional Judge has not been appointed, or, having been appointed, is also absent, the Registrar may, subject to any instructions which he may have received from the Judge, or, with respect to decrees or orders made by an Additional Judge, from the Additional Judge, make any orders in respect of applications for the execution of decrees and orders made by the Court of which he is Registrar, or sent to that Court for execution, which the Judge might make under this Act.

(2) The Judge, in the case of any decree or order with respect to the execution of which the Registrar has made an order under sub section (1), or the Additional Judge, in the case of any such decree or order which has been made by himself and with respect to which proceedings have not been taken by the Judge under this sub-section, may, of his own motion, or on application made by a party within fifteen days from the date of the order of the Registrar, or of the execution of any process issued in pursuance of that order, reverse or modify the order.

(3) The period of fifteen days mentioned in sub-section (2) shall be computed in accordance with the provisions of the Indian Limitation Act, 1877,* as though the application of the party were an application for review of judgment.

22. When the Judge of a Court of Small Causes is absent, Adjournment of cases and an Additional Judge has not been appointed, or, having been appointed, is also absent, the Registrar or other chief ministerial officer of the Court may exercise, from time to time, the power which the Court possesses of adjourning the hearing of any suit or other proceeding, and fix a day for the further hearing thereof.

23. (1) Notwithstanding anything in the foregoing portion of this Act, when the right of a plaintiff and the relief claimed by him in a Court of Small Causes depend upon the proof or disproof of a title to immoveable property or other title which such a Court cannot finally determine, the Court may, at any stage of the proceedings, return the plaint to be presented to a Court having jurisdiction to determine the title.

* Act XV. of 1877. But see now the new Limitation Act (IX. of 1908), whereby the former has been repealed *in toto*.

of the explanation —A, a purchaser, sues B, his vendor, for specific performance of a contract for the sale of a patent. Before the hearing of the suit, the patent expires. The Court may award A compensation for the non-performance of the contract, and may, if necessary, amend the plaint for that purpose.

A sues for the specific performance of a resolution passed by the directors of a public company, under which he was entitled to have a certain number of shares allotted to him, and for compensation for the non-performance of the resolution. All the shares had been allotted before the institution of the suit. The Court may, under this section, award A compensation or the non-performance.

20. A contract, otherwise proper to be specifically enforced, may be thus enforced, though a sum be named in it as the amount to be paid in case of its breach, and the party in default is willing to pay the same.

Illustration.

A contracts to grant B an under-lease of property held by A under C, and that he will apply to C for a license necessary to the validity of the under-lease, and that, if the license is not procured, A will pay B Rs. 10,000. A refuses to apply for the license, and offers to pay B the Rs. 10,000. B is nevertheless entitled to have the contract specifically enforced if C consents to give the license.

(b) Contracts which cannot be specifically enforced.

Contracts not specifically enforceable.

21. The following contracts cannot be specifically enforced :—

- (a) a contract for the non-performance of which compensation in money is an adequate relief;
- (b) a contract which runs into such minute or numerous details, or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such that the Court cannot enforce specific performance of its material terms;
- (c) a contract the terms of which the Court cannot find with reasonable certainty;
- (d) a contract which is in its nature revocable;
- (e) a contract made by trustees either in excess of their powers or in breach of their trust;
- (f) a contract made by or on behalf of a corporation or public company created for special purposes, or by the promoters of such company, which is in excess of its powers;

- (a) keep such registers, books, and accounts as the High Court from time to time prescribes, and
- (b) comply with such requisitions as may be made by the District Court, the High Court, or the Local Government, for records, returns, and statements, in such form and manner as the authority making the requisition directs.

(2) The relation of the District Court to a Court of Small Causes with respect to administrative control shall be the same as that of the District Court to a Civil Court of the lowest grade competent to try an original suit of the value of five thousand rupees in that portion of the territories administered by the Local Government in which the Court of Small Causes is established,

29. A Court of Small Causes shall use a seal of such form and dimensions as are prescribed by the Local Government.

Abolition of Courts of Small Causes.

30. The Local Government may, by order in writing, abolish a Court of Small Causes.

31. (1) Nothing in this Act shall be construed to prevent the Local Government from appointing a person, who is a Judge or Additional Judge of a Court of Small Causes, to be also a Judge of any other Civil Court, or to be a Magistrate of any class, or to hold any other public office.

Saving of power to appoint Judge of Court of Small Causes to other office.

(2) When a Judge or Additional Judge is so appointed, the ministerial officers of his Court shall, subject to any rules which the Local Government may make in this behalf, be deemed to be ministerial officers appointed to aid him in the discharge of the duties of the other office.

Application of Act to Courts invested with jurisdiction of Court of Small Causes.

32. (1) So much of Chapters III. and IV. as relates to—

- (a) the nature of the suits cognizable by Courts of Small Causes,
- (b) the exclusion of the jurisdiction of other Courts in those suits,

particular crops on the land in his possession, and deliver them to A when cut and ready for delivery :

A contracts with B that, in consideration of Rs. 1,000 to be paid to him by B, he will paint a picture for B :

A contracts with B to execute certain works which the Court cannot superintend :

A contracts to supply B with all the goods of a certain class which B may require.

A contracts with B to take from B a lease of certain house for a specified term at a specified rent, " if the drawing-room is handsomely decorated," even if it is held to have so much certainty that compensation can be recovered for its breach.

A contracts to marry B

The above contracts cannot be specifically enforced

to *c*.—A, the owner of a refreshment-room, contracts with B to give him accommodation there for the sale of his goods, and to furnish him with the necessary appliances. A refuses to perform his contract. The case is one for compensation, and not for specific performance, the amount and nature of the accommodation and appliances being undefined.

to *d*.—A and B contract to become partners in a certain business, the contract not specifying the duration of the proposed partnership. This contract cannot be specifically performed, for, if it were so performed, either A or B might at once dissolve the partnership.

to *e*.—A is a trustee of land with power to lease it for seven years. He enters into a contract with B to grant a lease of the land for seven years, with a covenant to renew the lease at the expiry of the term. This contract cannot be specifically enforced.

The directors of a company have power to sell the concern with the sanction of a general meeting of the shareholders. They contract to sell it without any such sanction. This contract cannot be specifically enforced.

The trustees, A and B, empowered to sell trust-property worth a lakh of rupees, contract to sell it to C for Rs. 30,000. The contract is so disadvantageous as to be a breach of trust. C cannot enforce its specific performance.

The promoters of a company for working mines contract that the company, when formed, shall purchase certain mineral property. They take no proper precautions to ascertain the value of such property, and in fact agree to pay an extravagant price therefor. They also stipulate that the vendors shall give them a bonus out of the purchase-money. This contract cannot be specifically enforced.

to *f*.—A company, existing for the sole purpose of making and working a railway, contracts for the purchase of a piece of land for the purpose of erecting a cotton-mill thereon. This contract cannot be specifically enforced.

to *g*.—A contracts to let for twenty-one years to B the right to use such part of a certain railway made by A as was upon B's land, and that B should have a right of running carriages over the whole line on certain terms, and might require A to supply the necessary engine-power, and that A

35. (1) Where a Court of Small Causes or a Court invested with the jurisdiction of a Court of Small Causes has, from any cause, ceased to have jurisdiction with respect to any case, any proceeding in relation to the case, whether before or after decree, which, if the Court had not ceased to have jurisdiction, might have been had therein, may be had in the Court which, if the suit out of which the proceeding has arisen were about to be instituted, would have jurisdiction to try the suit.

(2) Nothing in this section applies to cases for which special provision is made in the Code of Civil Procedure* as extended to Courts of Small Causes, or in any other enactment for the time being in force.

36. [*Amendment of Indian Limitation Act, 1877.—Repealed by Act IX. of 1908 (the Indian Limitation Act, 1908).*]

37. All orders required by this Act to be made in writing of certain by the Local Government shall be published in the official Gazette.

THE FIRST SCHEDULE:

ENACTMENTS REPEALED.

[*Repealed by Act XII. of 1891.*]

THE SECOND SCHEDULE:

SUITS EXCEPTED FROM THE COGNIZANCE OF A COURT OF SMALL CAUSES.

(*See section 15.*)

(1) A suit concerning an act or order purporting to be done or made by the Governor-General in Council or a Local Government, or by the Governor-General or a Governor or by a Member of the Council of the Governor-General, or of the Governor of Madras or Bombay, in his official capacity, or concerning an act purporting to be done by any person by order of the Governor-General in Council or a Local Government;

(2) a suit concerning an act purporting to be done by any person in pursuance of a judgment or order of a Court, or of a judicial officer acting in the execution of his office;

* Act V. of 1908.

II Where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff.

Illustrations.

(e) A is entitled to some land under his father's will on condition that, if he sells it within twenty-five years, half the purchase-money shall go to B. A, forgetting the condition, contracts, before the expiration of the twenty-five years, to sell the land to C. Here the enforcement of the contract would operate so harshly on A that the Court will not compel its specific performance in favour of C.

(f) A and B, trustees, join their beneficiary, C, in a contract to sell the trust-estate to D, and personally agree to exonerate the estate from heavy incumbrances to which it is subject. -The purchase-money is not nearly enough to discharge those incumbrances, though, at the date of the contract, the vendors believed it to be sufficient. Specific performance of the contract should be refused to D.

(g) A, the owner of an estate, contracts to sell it to B, and stipulates that he (A) shall not be obliged to define its boundary. The estate really comprises a valuable property not known to either to be part of it. Specific performance of the contract should be refused to B, unless he waives his claim to the unknown property.

(h) A contracts with B to sell him certain land, and to make a road to it from a certain railway-station. It is found afterwards that A cannot make the road without exposing himself to litigation. Specific performance of the part of the contract relating to the road should be refused to B, even though it may be held that he is entitled to specific performance of the rest with compensation for loss of the road.

(i) A, a lessee of mines, contracts with B, his lessor, that at any time during the continuance of the lease B may give notice of his desire to take the machinery and plant used in and about the mines, and that he shall have the articles specified in his notice delivered to him at a valuation on the expiry of the lease. Such a contract might be most injurious to the lessee's business, and specific performance of it should be refused to B.

(j) A contracts to buy certain land from B. The contract is silent as to access to the land. No right of way to it can be shown to exist. Specific performance of the contract should be refused to B.

(k) A contracts with B to buy from B's manufactory, and not elsewhere, all the goods of a certain class used by A in his trade. The Court cannot compel B to supply the goods; but, if he does not supply them, A may be ruined, unless he is allowed to buy them elsewhere. Specific performance of the contract should be refused to B.

The following is a case in which the Court may properly exercise a discretion to decree specific performance:—

III. Where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

(20) a suit instituted under section 293* or section 332* of the Code of Civil Procedure,

(21) a suit to set aside an attachment by a Court or a revenue-authority, or a sale, mortgage, lease, or other transfer by a Court or a revenue-authority, or by a guardian;

(22) a suit for property which the plaintiff has conveyed while insane;

(23) a suit to alter or set aside a decision, decree, or order of a Court, or of a person acting in a judicial capacity;

(24) a suit to contest an award;

(25) a suit upon a foreign judgment as defined in the Code of Civil Procedure,† or upon a judgment obtained in British India;

(26) a suit to compel a refund of assets improperly distributed under section 295* of the Code of Civil Procedure,

(27) a suit under the Indian Succession Act, 1865,‡ section 320 or section 321, or under the Probate and Administration Act, 1881,§ section 139 or section 140, to compel a refund by a person to whom an executor or administrator has paid a legacy, or distributed assets,

(28) a suit for a legacy, or for the whole or a share of a residue bequeathed by a testator, or for the whole or a share of the property of an intestate;

(29) a suit—

(a) for a dissolution of partnership, or for the winding-up of the business of a partnership after its dissolution,

(b) for an account of partnership-transactions; or

(c) for a balance of partnership-account, unless the balance has been struck by the parties or their agents;

(30) a suit for an account of property, and for its due administration under decree;

(31) any other suit for an account, including a suit by a mortgagor, after the mortgage has been satisfied, to recover surplus collections received by the mortgagee, and a suit for the profits of immoveable property belonging to the plaintiff which have been wrongfully received by the defendant,

(32) a suit for a general average loss, or for salvage;

(33) a suit for compensation in respect of collision between ships;

* These sections (of Act XIV. of 1882, the old Code now repealed) should now be taken as applying respectively to rule 63 and rules 100, 101, 103 of Order XXI. and s. 73 of Act V. of 1908 (the new Code).—See s. 158 of the latter Act

† Act V. of 1908.

‡ Act X. of 1865.

§ Act V. of 1881.

(h) when the promoters of a public company have, before its incorporation, entered into a contract for the purposes of the company, and such contract is warranted by the terms of the incorporation, the company,

(e) *For whom Contracts cannot be specifically enforced.*

Personal bars to the relief. 24. Specific performance of a contract cannot be enforced in favour of a person—

- (a) who could not recover compensation for its breach;
- (b) who has become incapable of performing, or violates, any essential term of the contract that on his part remains to be performed;
- (c) who has already chosen his remedy, and obtained satisfaction for the alleged breach of contract; or
- (d) who, previously to the contract, had notice that a settlement of the subject-matter thereof (though not founded on any valuable consideration) had been made, and was then in force.

Illustrations.

to clause *a*—A, in the character of agent for B, enters into an agreement with C to buy C's house. A is, in reality, acting, not as agent for B, but on his own account. A cannot enforce specific performance of this contract.

to clause *b*—A contracts to sell B a house, and to become tenant thereof for a term of fourteen years from the date of the sale at a specified yearly rent. A becomes insolvent. Neither he nor his assignee can enforce specific performance of the contract.

A contracts to sell B a house and garden in which there are ornamental trees, a material element in the value of the property as a residence. A, without B's consent, fells the trees. A cannot enforce specific performance of the contract.

A, holding land under a contract with B, for a lease, commits waste, or treats the land in an unhusbandlike manner. A cannot enforce specific performance of the contract.

A contracts to let, and B contracts to take, an unfinished house, B contracting to finish the house, and the lease to contain covenants on the part of A to keep the house in repair. B finishes the house in a very defective manner, he cannot enforce the contract specifically, though A and B may sue each other for compensation for breach of it.

to clause *c*.—A contracts to let, and B contracts to take, a house for a specified term at a specified rent. B refuses to perform the contract. A

(42) a suit by one of several joint mortgagors of immoveable property for contribution in respect of money paid by him for the redemption of the mortgaged property;

(43) a suit against the Government to recover money paid under protest in satisfaction of a claim made by a revenue-authority on account of an arrear of land-revenue, or of a demand recoverable as an arrear of land-revenue,

(44) a suit the cognizance whereof by a Court of Small Causes is barred by any enactment for the time being in force.

obtain the performance sought, except with the variation, so set up, in the following cases (namely):—

- (a) where by fraud or mistake of fact the contract of which performance is sought is in terms different from that which the defendant supposed it to be when he entered into it;
- (b) where, by fraud, mistake of fact, or surprise, the defendant entered into the contract under a reasonable misapprehension as to its effect as between himself and the plaintiff;
- (c) where the defendant, knowing the terms of the contract and understanding its effect, has entered into it relying upon some misrepresentation by the plaintiff, or upon some stipulation on the plaintiff's part which adds to the contract, but which he refuses to fulfil;
- (d) where the object of the parties was to produce a certain legal result, which the contract as framed is not calculated to produce;
- (e) where the parties have, subsequently to the execution of the contract, contracted to vary it.

Illustrations.

(a.) A, B, and C sign a writing, by which they purport to contract each to enter into a bond to D for Rs. 1,000. In a suit by D to make A, B, and C separately liable each to the extent of Rs. 1,000, they prove that the word 'each' was inserted by mistake; that the intention was that they should give a joint bond for Rs. 1,000. D can obtain the performance sought only with the variation thus set up.

(b.) A sues B to compel specific performance of a contract in writing to buy a dwelling-house. B proves that he assumed that the contract included an adjoining yard and the contract was so framed as to leave it doubtful whether the yard was so included or not. The Court will refuse to enforce the contract, except with the variation set up by B.

(c.) A contracts in writing to let to B a wharf, together with a strip of A's land delineated in a map. Before signing the contract, B proposed orally that he should be at liberty to substitute for the strip mentioned in the contract another strip of A's land of the same dimensions, and to this A expressly assented. B then signed the written contract. A cannot obtain specific performance of the written contract, except with the variation set up by B.

(d.) A and B enter into negotiations for the purpose of securing land to B for his life, with remainder to his issue. They execute a contract, the terms of which are found to confer an absolute ownership on B. The contract so framed cannot be specifically enforced.

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29. Place for registering other documents
30. Registration by Registrars in certain cases
31. Registration or acceptance for deposit at private residence.

PART VI.

OF PRESENTING DOCUMENTS FOR REGISTRATION.

32. Persons to present documents for registration.
33. Powers-of-attorney recognizable for purposes of section 32
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PART VII.

OF ENFORCING THE APPEARANCE OF EXECUTANTS AND WITNESSES

36. Procedure where appearance of executant or witness is desired.
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39. Law as to summonses, commissions, and witnesses.

PART VIII.

OF PRESENTING WILLS AND AUTHORITIES TO ADOPT.

40. Persons entitled to present wills and authorities to adopt.
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PART IX.

OF THE DEPOSIT OF WILLS.

42. Deposit to wills.

SECTIONS.

43. Procedure on deposit of wills.
44. Withdrawal of sealed cover deposited under section 42.
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OF THE EFFECTS OF REGISTRATION AND NON-REGISTRATION.

47. Time from which registered document operates.
48. Registered documents relating to property when to take effect against oral agreements
49. Effect of non-registration of documents required to be registered.
50. Certain registered documents relating to land to take effect against unregistered documents.

PART XI.

OF THE DUTIES AND POWERS OF REGISTERING OFFICERS

(A)—*As to the Register-books and Indexes*

51. Register-books to be kept in the several offices
52. Duties of registering officer when document presented
53. Entries to be numbered consecutively
54. Current indexes and entries therein
55. Indexes to be made by registering officers and their contents.
56. Copy of entries in indexes Nos. I, II, and III. to be sent by Sub-Registrar to Registrar and filed.

A contracts in consideration of Rs. 1,000 to bequeath certain of his lands to B. Immediately after the contract A dies intestate, and C takes out administration to his estate. B may enforce specific performance of the contract against C.

A contracts to sell certain land to B. Before the completion of the contract A becomes a lunatic, and C is appointed his committee. B may specifically enforce the contract against C.

to clause c.—A, the tenant for life of an estate, with remainder to B, in due exercise of a power conferred by the settlement under which he is tenant for life, contracts to sell the estate to C, who has notice of the settlement. Before the sale is completed A dies. C may enforce specific performance of the contract against B.

A and B are joint tenants of land, his undivided moiety of which either may alien in his lifetime, but which, subject to that right, devolves on the survivor. A contracts to sell his moiety to C, and dies. C may enforce specific performance of the contract against B.

(h) Against whom Contracts cannot be specifically enforced.

28. Specific performance of a contract cannot be enforced

What parties cannot be against a party thereto in any of the following cases:—

- (a) if the consideration to be received by him is so grossly inadequate with reference to the state of things existing at the date of the contract as to be, either by itself or coupled with other circumstances, evidence of fraud, or of undue advantage taken by the plaintiff;
- (b) if his assent was obtained by the misrepresentation (whether wilful or innocent), concealment, circumvention, or unfair practices of any party to whom performance would become due under the contract, or by any promise of such party which has not been substantially fulfilled;
- (c) if his assent was given under the influence of mistake of fact, misapprehension, or surprise: provided that, when the contract provides for compensation in case of mistake, compensation may be made for a mistake within the scope of such provision, and the contract may be specifically enforced in other respects if proper to be so enforced.

Illustrations.

to clause c.—A, one of two executors, in the erroneous belief that he had the authority of his co-executor, enters into an agreement for the sale to B of his testator's property. B cannot insist on the sale being completed.

SECTIONS.

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Miscellaneous.

- 85. Destruction of unclaimed documents
- 86. Registering officer not liable for thing *bona fide* done or refused in his official capacity.
- 87. Nothing so done invalidated by defect in appointment or procedure.
- 88. Registration of documents executed by Government officers or certain public functionaries.
- 89. Copies of certain orders, certificates, and instruments to be sent to registering officers and filed.

SECTIONS.

Exemptions from Act.

- 90. Exemption of certain documents executed by or in favour of Government.
- 91. Inspection and copies of such documents.
- 92. Burmese registration-rules confirmed.

Repeals.

- 93. Repeals.

THE SCHEDULE—REPEAL OF
ENACTMENTS

(b) By a marriage-settlement, A, the father of B, the intended wife, covenants with C, the intended husband, to pay to C, his executors, administrators, and assigns, during A's life, an annuity of Rs. 5,000. C dies insolvent, and the official assignee claims the annuity from A. The Court, on finding it clearly proved that the parties always intended that this annuity should be paid as a provision for B and her children, may rectify the settlement, and decree that the assignee has no right to any part of the annuity.

32. For the purpose of rectifying a contract in writing, the Presumption as to intent Court must be satisfied that all the parties thereto intended to make an equitable and conscientious agreement.

33. In rectifying a written instrument, the Court may inquire what the instrument was intended to mean, and what were intended to be its legal consequences, and is not confined to the inquiry what the language of the instrument was intended to be.

34. A contract in writing may be first rectified, and then, Specific enforcement of if the plaintiff has so prayed in his rectified contract. rectified contract. plaint, and the Court thinks fit, specifically enforced.

Illustration.

A contracts in writing to pay his attorney, B, a fixed sum in lieu of costs. The contract contains mistakes, as to the name and rights of the client, which, if construed strictly, would exclude B from all rights under it. B is entitled, if the Court thinks fit, to have it rectified, and to an order for payment of the sum, as if at the time of its execution it had expressed the intention of the parties.

CHAPTER IV.

OF THE RESCISSION OF CONTRACTS.

35.* Any person interested in a contract in writing may sue When rescission may be to have it rescinded, and such rescission adjudged. may be adjudged by the Court in any of the following cases, namely:—

(a) where the contract is voidable or terminable by the plaintiff;

* In ss. 35 and 36 the words "in writing" have been repealed by the Transfer of Property Act (IV. of 1882) in territories in which this Act is in force.—See Act IV. of 1882, ss. 1 and 2.

(5) "endorsement" and "endorsed" include and apply to an entry in writing by a registering officer on a rider or covering slip to any document tendered for registration under this Act :

(6) "immoveable property" includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries, or any other benefit to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops, nor grass :

(7) "lease" includes a counterpart, kabuliat, an undertaking to cultivate or occupy, and an agreement to lease :

(8) "minor" means a person who, according to the personal law to which he is subject, has not attained majority :

(9) "moveable property" includes standing timber, growing crops, and grass, fruit upon and juice in trees, and property of every other description except immoveable property : and

(10) "representative" includes the guardian of a minor and the committee or other legal curator of a lunatic or idiot.

PART II.

OF THE REGISTRATION-ESTABLISHMENT.

3. (1) The Local Government shall appoint an officer to be Inspector-General of Registration. the Inspector-General of Registration for the territories subject to such Government :

Provided that the Local Government may, instead of making such appointment, direct that all or any of the powers and duties hereinafter conferred and imposed upon the Inspector-General shall be exercised and performed by such officer or officers, and within such local limits, as the Local Government appoints in this behalf.

(2) Any Inspector-General may hold simultaneously any other office under Government.

4. (1) The Governor of Bombay in Council may also, with the previous consent of the Governor-General in Council, appoint an officer to be Branch Inspector-General of Sindh, who shall have all the powers of an Inspector-General under this Act other than the power to frame rules hereinafter conferred.

38. On adjudging the rescission of a contract, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

CHAPTER V.

OF THE CANCELLATION OF INSTRUMENTS.

39. Any person against whom a written instrument is void or voidable, who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, may sue to have it adjudged void or voidable, and the Court may, in its discretion, so adjudge it, and order it to be delivered up and cancelled.

If the instrument has been registered under the Indian Registration Act, 1887,* the Court shall also send a copy of its decree to the officer in whose office the instrument has been so registered, and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.

Illustrations.

(a.) A, the owner of a ship, by fraudulently representing her to be seaworthy, induces B, an underwriter, to insure her. B may obtain the cancellation of the policy.

(b) A conveys land to B, who bequeaths it to C, and dies. Thereupon D gets possession of the land, and produces a forged instrument, stating that the conveyance was made to B in trust for him. C may obtain the cancellation of the forged instrument.

(c) A, representing that the tenants on his land were all at will, sells it to B, and conveys it to him by an instrument dated the 1st January 1877. Soon after that day, A fraudulently grants to C a lease of part of the lands, dated the 1st October 1876, and procures the lease to be registered under the Indian Registration Act, 1887.* B may obtain the cancellation of this lease.

(d) A agrees to sell and deliver a ship to B, to be paid for by B's acceptances of four bills of exchange, for sums amounting to Rs. 30,000, to be drawn by A on B. The bills are drawn and accepted, but the ship is not delivered according to the agreement. A sues B on one of the bills. B may obtain the cancellation of all the bills.

* The reference to Act VIII. of 1871 has been altered in accordance with Act III. of 1877, s. 2.

9. Every military cantonment may (if the Local Government so directs) be, for the purposes of this Act, a sub-district or a district, and the Cantonment Magistrate shall be the Sub-Registrar or the Registrar of such sub-district or district, as the case may be.

10. (1) When any Registrar, other than the Registrar of a district including a Presidency-town, is absent otherwise than on duty in his district, or when his office is temporarily vacant, any person whom the Inspector-General appoints in this behalf, or, in default of such appointment, the Judge of the District Court, within the local limits of whose jurisdiction the Registrar's office is situate, shall be the Registrar during such absence, or until the Local Government fills up the vacancy.

(2) When the Registrar of a district including a Presidency-town is absent otherwise than on duty in his district, or when his office is temporarily vacant, any person whom the Inspector-General appoints in this behalf shall be the Registrar during such absence, or until the Local Government fills up the vacancy.

11. When any Registrar is absent from his office on duty in his district, he may appoint any Sub-Registrar or other person in his district to perform, during such absence, all the duties of a Registrar except those mentioned in sections 68 and 72.

12. When any Sub-Registrar is absent, or when his office is temporarily vacant, any person whom the Registrar of the district appoints in this behalf shall be Sub-Registrar during such absence, or until the Local Government fills up the vacancy.

13. (1) All appointments made under section 10, section 11, or section 12 shall be reported to the Local Government by the Inspector-General.

(2) Such report shall be either special or general, as the Local Government directs.

(3) The Local Government may suspend, remove, or dismiss any person appointed under the provisions of this Act, and appoint another person in his stead.

(b) A bequeaths his property to B, C, and D, 'to be equally divided amongst all and each of them, if living at the time of my death, then amongst their surviving children.' No such children are in existence. In a suit against A's executor, the Court may declare whether B, C, and D took the property absolutely, or only for their lives, and it may also declare the interests of the children before their rights are vested.

(c) A covenants that, if he should at any time be entitled to property exceeding one lakh of rupees, he will settle it upon certain trusts. Before any such property accrues, or any persons entitled under the trusts are ascertained, he institutes a suit to obtain a declaration that the covenant is void for uncertainty. The Court may make the declaration.

(d) A alienates to B property in which A has merely a life-interest. The alienation is invalid as against C, who is entitled as reversioner. The Court may, in a suit by C against A and B, declare that C is so entitled.

(e) The widow of a sonless Hindu alienates part of the property of which she is in possession as such. The person presumptively entitled to possess the property if he survive her may, in a suit against the alienee, obtain a declaration that the alienation was made without legal necessity, and was therefore void beyond the widow's lifetime.

(f) A Hindu widow in possession of property adopts a son to her deceased husband. The person presumptively entitled to possession of the property on her death without a son may, in a suit against the adopted son, obtain a declaration that the adoption was invalid.

(g) A is in possession of certain property. B, alleging that he is the owner of the property, requires A to deliver it to him. A may obtain a declaration of his right to hold the property.

(h) A bequeaths property to B for his life, with remainder to B's wife and her children (if any) by B, but if B die without any wife or children to C. B has a putative wife, D, and children, but C denies that B and D were ever lawfully married. D and her children may, in B's lifetime, institute a suit against C, and obtain therein a declaration that they are truly the wife and children of B.

43. A declaration made under this chapter is binding only

on the parties to the suit, persons claiming through them respectively; and, where any of the parties are trustees, on the persons for whom, if in existence at the date of the declaration, such parties would be trustees.

Illustration.

A, a Hindu, in a suit to which B, his alleged wife, and her mother, are defendants, seeks a declaration that his marriage was duly solemnized, and an order for the restitution of his conjugal rights. The Court makes the declaration and order. C, claiming that B is his wife, then sues A for the recovery of B. The declaration made in the former suit is not binding upon C.

- (a) instruments of gift of immoveable property ;
- (b) other non-testamentary instruments which purport or operate to create, declare, assign, limit, or extinguish, whether in present or in future, any right, title, or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immoveable property ;
- (c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation, or extinction of any such right title, or interest, and
- (d) leases of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent :

Provided that the Local Government may, by order published in the local official gazette, exempt from the operation of this sub-section any leases executed in any district, or part of a district, the terms granted by which do not exceed five years, and the annual rents reserved by which do not exceed fifty rupees.

(2) Nothing in clauses (b) and (c) of sub-section (1) applies to—

(i) any composition-deed ; or

(ii) any instrument relating to shares in a Joint Stock Company, notwithstanding that the assets of such Company consist in whole or in part of immoveable property ; or

(iii) any debenture issued by any such Company, and not creating, declaring, assigning, limiting, or extinguishing any right, title, or interest to or in immoveable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the Company has mortgaged, conveyed, or otherwise transferred the whole or part of its immoveable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures ; or

(iv) any endorsement upon or transfer of any debenture issued by any such Company ; or

(v) any document not itself creating, declaring, assigning, limiting, or extinguishing any right, title, or interest of the value of one hundred rupees and upwards to or

(f) to make any order binding on the Secretary of State for India in Council, on the Governor-General in Council, on the Governor of Madras in Council, on the Governor of Bombay in Council, or on the Lieutenant-Governor of Bengal ;

(g) to make any order on any other servant of the Crown as such, merely to enforce the satisfaction of a claim upon the Crown ; or

(h) to make any order which is otherwise expressly excluded by any law for the time being in force.

46. Every application under section 45 must be founded on an affidavit of the person injured, stating his right in the matter in question, his demand of justice, and the denial thereof ; and the High Court may, in its discretion, make the order applied for absolute in the first instance, or refuse it, or grant a rule to show cause why the order applied for should not be made.

Application how made.

Procedure thereon.

If in the last case the person, Court, or corporation complained of, shows no sufficient cause, the High Court may first make an order in the alternative, either to do or forbear the act mentioned in the order, or to signify some reason to the contrary, and make an answer thereto by such day as the High Court fixes in this behalf.

Order in alternative.

47. If the person, Court, or corporation, to whom or to which such order is directed, makes no answer, or makes an insufficient or a false answer, the High Court may then issue a peremptory order to do or forbear the act absolutely.

Peremptory order.

48. Every order under this chapter shall be executed, and may be appealed from, as if it were a decree made in the exercise of the ordinary original civil jurisdiction of the High Court.

Execution of, and appeal from, orders

49. The costs of all applications and orders under this chapter shall be in the discretion of the High Court.

Costs.

Bar to issue of *mandamus*.

50. Neither the High Court nor any Judge thereof shall hereafter issue any writ of *mandamus*.

- (b) instruments acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation, or extinction of any such right, title, or interest ;
- (c) leases of immoveable property for any term not exceeding one year, and leases exempted under section 17 ;
- (d) instruments (other than wills) which purport or operate to create, declare, assign, limit, or extinguish any right, title, or interest to or in moveable property ;
- (e) wills ; and
- (f) all other documents not required by section 17 to be registered.

19. If any document duly presented for registration be in a language which the registering officer does not understand, and which is not commonly used in the district, he shall refuse to register the document, unless it be accompanied by a true translation into a language commonly used in the district, and also by a true copy.

20. (1) The registering officer may, in his discretion, refuse to accept for registration any document in which any interlineation, blank, erasure, or alteration appears, unless the persons executing the document attest with their signatures or initials such interlineation, blank, erasure, or alteration.

(2) If the registering officer registers any such document, he shall, at the time of registering the same, make a note in the register of such interlineation, blank, erasure, or alteration.

21. (1) No non-testamentary document relating to immoveable property shall be accepted for registration unless it contains a description of such property sufficient to identify the same.

(2) Houses in towns shall be described as situate on the north or other side of the street or road (which should be specified) to which they front, and by their existing and former occupancies, and by their numbers if the houses in such street or road are numbered.

(3) Other houses and lands shall be described by their name, if any, and as being in the territorial division in which they are

When such obligation arises from contract, the Court shall be guided by the rules and provisions contained in Chapter II. of this Act.

When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the Court may grant a perpetual injunction in the following cases (namely):—

- (a) where the defendant is trustee of the property for the plaintiff;
- (b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;
- (c) where the invasion is such that pecuniary compensation would not afford adequate relief;
- (d) where it is probable that pecuniary compensation cannot be got for the invasion;
- (e) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

Explanation.—For the purpose of this section trade-mark is property.

Illustrations.

(a) A lets certain land to B, and B contracts not to dig sand or gravel thereout. A may sue for an injunction to restrain B from digging in violation of his contract.

(b) A trustee threatens a breach of trust. His co-trustees (if any) should, and the beneficial owners may, sue for an injunction to prevent the breach.

(c) The directors of a public company are about to pay a dividend out of capital or borrowed money. Any of the shareholders may sue for an injunction to restrain them.

(d) The directors of a fire and life insurance company are about to engage in marine insurances. Any of the shareholders may sue for an injunction to restrain them.

(e) A, an executor, through misconduct or insolvency, is bringing the property of the deceased into danger. The Court may grant an injunction to restrain him from getting in the assets.

(f) A, a trustee for B, is about to make an imprudent sale of a small part of the trust-property. B may sue for an injunction to restrain the sale, even though compensation in money would have afforded him adequate relief.

(g) A makes a settlement (not founded on marriage or other valuable consideration) of an estate on B and his children. A then contracts to sell

25. (1) If, owing to urgent necessity or unavoidable accident, Provision where delay in any document executed, or copy of a presentation is unavoidable. decree or order made, in British India, is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the Registrar, in cases where the delay in presentation does not exceed four months, may direct that, on payment of a fine not exceeding ten times the amount of the proper registration-fee, such document shall be accepted for registration.

(2) Any application for such direction may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

26. When a document purporting to have been executed by Documents executed out of all or any of the parties out of British India is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the registering officer, if satisfied—

(a) that the instrument was so executed, and

(b) that it has been presented for registration within four months after its arrival in British India,

may, on payment of the proper registration-fee, accept such document for registration.

Wills may be presented or deposited at any time

27 A will may at any time be presented for registration or deposited in manner hereinafter provided.

PART V.

OF THE PLACE OF REGISTRATION.

28. Save as in this Part otherwise provided, every document mentioned in section 17, sub-section (1), clauses (a), (b), (c), and (d), and section 18, clauses (a), (b), and (c), shall be presented for registration in the office of a Sub-Registrar within whose sub-district the whole or some portion of the property to which such document relates is situated.

29. (1) Every document other than a document referred to in section 28, and a copy of a decree or order, may be presented for registration, Place for registering other documents.

threatens to remove certain pillars which help to support B's mine. B may sue for an injunction to restrain him from so doing.

(s.) A rings bells or makes some other unnecessary noise so near a house as to interfere materially and unreasonably with the physical comfort of the occupier, B. B may sue for an injunction restraining A from making the noise.

(t.) A pollutes the air with smoke so as to interfere materially with the physical comfort of B and C, who carry on business in a neighbouring house. B and C may sue for an injunction to restrain the pollution.

(u.) A infringes B's patent. If the Court is satisfied that the patent is valid, and has been infringed, B may obtain an injunction to restrain the infringement.

(v.) A pirates B's copyright. B may obtain an injunction to restrain the piracy, unless the work of which copyright is claimed is libellous or obscene.

(w.) A improperly uses the trade-mark of B. B may obtain an injunction to restrain the user, provided that B's use of the trade-mark is honest.

(x.) A, a tradesman, holds out B as his partner against the wish and without the authority of B. B may sue for an injunction to restrain A from so doing.

(y.) A, a very eminent man, writes letters on family-topics to B. After the death of A and B C, who is B's residuary legatee, proposes to make money by publishing A's letters. D, who is A's executor, has a property in the letters, and may sue for an injunction to restrain B from publishing them.

(z.) A carries on a manufactory, and B is his assistant. In the course of his business, A imparts to B a secret process of value. B afterwards demands money of A, threatening, in case of refusal, to disclose that process to C, a rival manufacturer. A may sue for an injunction to restrain B from disclosing the process.

56. When, to prevent the breach of an obligation, it is neces-

sary to compel the performance of certain acts which the Court is capable of enforcing, the Court may, in its discretion, grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.

Illustrations.

(a.) A, by new buildings, obstructs lights, to the access and use of which B has acquired a right under the Indian Limitation Act, 1877, Part IV.* B may obtain an injunction, not only to restrain A from going on with the buildings, but also to pull down so much of them as obstructs B's lights.

* The reference to Act IX. of 1871 has been altered in accordance with Act XV. of 1877, s. 2.

- (b) by the representative or assign of such person, or
- (c) by the agent of such person, representative, or assign, duly authorized by power-of-attorney executed and authenticated in manner hereinafter mentioned.

Powers-of-attorney recognizable for purposes of section 32.

33. (1) For the purposes of section 32, the following powers-of-attorney shall alone be recognized, namely,—

- (a) if the principal, at the time of executing the power-of-attorney, resides in any part of British India in which this Act is for the time being in force, a power-of-attorney executed before, and authenticated by, the Registrar or Sub-Registrar within whose district or sub-district the principal resides;
- (b) if the principal, at the time aforesaid, resides in any other part of British India, a power-of-attorney executed before, and authenticated by, any Magistrate;
- (c) if the principal, at the time aforesaid, does not reside in British India, a power-of-attorney executed before, and authenticated by, a Notary Public, or any Court, Judge, Magistrate, British Consul or Vice-Consul, or representative of His Majesty or of the Government of India:

Provided that the following persons shall not be required to attend at any registration-office or Court for the purpose of executing any such power-of-attorney as is mentioned in clauses (a) and (b) of this section, namely,—

- (i) persons who, by reason of bodily infirmity, are unable, without risk or serious inconvenience, so to attend;
- (ii) persons who are in jail under civil or criminal process; and
- (iii) persons exempt by law from personal appearance in Court.

(2) In the case of every such person, the Registrar or Sub-Registrar or Magistrate, as the case may be, if satisfied that the power-of-attorney has been voluntarily executed by the person purporting to be the principal, may attest the same without requiring his personal attendance at the office or Court aforesaid.

(3) To obtain evidence as to the voluntary nature of the execution, the Registrar or Sub-Registrar or Magistrate may either

(j) when the conduct of the applicant or his agents has been such as to disentitle him to the assistance of the Court,

(k) where the applicant has no personal interest in the matter.

Illustrations

(a.) A seeks an injunction to restrain his partner, B, from receiving the partnership debts and effects. It appears that A had improperly possessed himself of the books of the firm, and refused B access to them. The Court will refuse the injunction.

(b) A manufactures and sells crucibles, designating them as "patent plumbago crucibles," though, in fact, they have never been patented. B pirates the designation. A cannot obtain an injunction to restrain the piracy.

(c.) A sells an article called "Mexican Balm," stating that it is compounded of divers rare essences, and has sovereign medicinal qualities. B commences to sell a similar article, to which he gives a name and description such as to lead people into the belief that they are buying A's Mexican balm. A sues B for an injunction to restrain the sale. B shows that A's Mexican balm consists of nothing but scented hogs' lard. A's use of his description is not an honest one, and he cannot obtain an injunction.

57. Notwithstanding section 56, clause f, where a contract to perform comprises an affirmative agreement to do a certain act, coupled with a negative agreement, express or implied, not to do a certain act, the circumstance that the Court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement: provided that the applicant has not failed to perform the contract so far as it is binding on him.

Illustrations

(a) A contracts to sell to B for Rs. 1,000 the good-will of a certain business unconnected with business-premises, and further agrees not to carry on that business in Calcutta. B pays A the Rs. 1,000, but A carries on the business in Calcutta. The Court cannot compel A to send his customers to B, but B may obtain an injunction restraining A from carrying on the business in Calcutta.

(b) A contracts to sell to B the good-will of a business. A then sets up a similar business close by B's shop, and solicits his old customers to deal with him. This is contrary to his implied contract, and B may obtain an injunction to restrain A from soliciting customers, and from doing any act whereby their good-will may be withdrawn from B.

(c) A contracts with B to sing for twelve months at B's theatre, and not to sing in public elsewhere. B cannot obtain specific performance of

35. (1) (a) If all the persons executing the document appear personally before the registering officer, and are personally known to him, or if he be otherwise satisfied that they are the persons they represent themselves to be, and if they all admit the execution of the document, or

(b) if, in the case of any person appearing by a representative, assign, or agent, such representative, assign, or agent admits the execution, or

(c) if the person executing the document is dead, and his representative or assign appears before the registering officer, and admits the execution,

the registering officer shall register the document as directed in sections 58 to 61, inclusive.

(2) The registering officer may, in order to satisfy himself that the persons appearing before him are the persons they represent themselves to be, or for any other purpose contemplated by this Act, examine any one present in his office.

(3) (a) If any person by whom the document purports to be executed denies its execution, or,

(b) if any such person appears to the registering officer to be a minor, an idiot, or a lunatic, or

(c) if any person by whom the document purports to be executed is dead, and his representative or assign denies its execution,

the registering officer shall refuse to register the document as to the person so denying, appearing, or dead:

Provided that, where such officer is a Registrar, he shall follow the procedure prescribed in Part XII.

PART VII.

OF ENFORCING THE APPEARANCE OF EXECUTANTS AND WITNESSES.

36. If any person presenting any document for registration or claiming under any document, which is capable of being so presented, desires the appearance of any person whose presence or testimony is necessary for the registration of such document, the registering officer may, in his discretion, call upon

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ACT NO. II. OF 1899.

The Indian Stamp Act, 1899.

[As amended up to June 1907.]

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41. (1) A will or an authority to adopt presented for registration by the testator or donor may be registered in the same manner as any other document.

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(2) A will or authority to adopt presented for registration by any other person entitled to present it shall be registered if the registering officer is satisfied—

(a) that the will or authority was executed by the testator or donor, as the case may be ;

(b) that the testator or donor is dead ; and

(c) that the person presenting the will or authority is, under section 40, entitled to present the same.

PART IX.

OF THE DEPOSIT OF WILLS.

42. Any testator may, either personally or by duly-authorized agent, deposit with any Registrar his will in a sealed cover superscribed with the name of the testator, and that of his agent (if any), and with a statement of the nature of the document.

Deposit of wills.

43. (1) On receiving such cover, the Registrar, if satisfied that the person presenting the same for deposit is the testator or his agent, shall transcribe in his Register-book No. 5 the superscription aforesaid, and shall note in the same book, and on the said cover, the year, month, day, and hour of such presentation and receipt, and the names of any persons who may testify to the identity of the testator or his agent, and any legible inscription which may be on the seal of the cover.

(2) The Registrar shall then place and retain the sealed cover in his fire-proof box.

44. If the testator, who has deposited such cover, wishes to withdraw it, he may apply, either personally or by duly-authorized agent, to the Registrar who holds it in deposit, and, such Registrar, if satisfied that the applicant is actually the testator or his agent, shall deliver the cover accordingly.

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- (a) affect any immoveable property comprised therein, or
 - (b) confer any power to adopt, or
 - (c) be received as evidence of any transaction affecting such property or conferring such power,
- unless it has been registered.

50. (1) Every document of the kinds mentioned in clauses (a), (b), (c), and (d) of section 17, sub-section (1), and clauses (a) and (b) of section 18, shall, if duly registered, take effect, as regards the property comprised therein, against every unregistered document relating to the same property, and not being a decree or order, whether such unregistered document be of the same nature as the registered document or not.

(2) Nothing in sub-section (1) applies to leases exempted under the proviso to sub-section (1) of section 17, or to any document mentioned in sub-section (2) of the same section, or to any registered document which had not priority under the law in force at the commencement of this Act.

Explanation.—In cases where Act No. XVI. of 1864 or the Indian Registration Act, 1866,* was in force in the place, and at the time, in and at which such unregistered document was executed, “unregistered” means not registered according to such Act, and, where the document is executed after the first day of July, 1871, not registered under the Indian Registration Act, 1871,† or the Indian Registration Act, 1877,‡ or this Act.

PART XI.

OF THE DUTIES AND POWERS OF REGISTERING OFFICERS.

(A)—*As to the Register-books and Indexes.*

51. (1) The following books shall be kept in the several offices hereinafter named, namely:—

Register-books to be kept in the several offices.

A.—In all registration offices—

Book 1.—“Register of Non-testamentary Documents relating to Immoveable Property;”

* Act XX. of 1866. † Act VIII. of 1871. ‡ Act III. of 1877.

(2) "**Bill of exchange**" means a bill of exchange as defined by the *Negotiable Instruments Act, 1881*,* and includes also a hundi and any other document entitling or purporting to entitle any person, whether named therein or not, to payment by any other person of, or to draw upon any other person for, any sum of money :

In the old Act the definition of "bill of exchange" was merely this :
 "' Bill of exchange ' includes a hundi."

(3) "**Bill of exchange payable on demand**" includes—

- (a) an order for the payment of any sum of money by a bill of exchange or promissory note, or for the delivery of any bill of exchange or promissory note in satisfaction of any sum of money, or for the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen ;
- (b) an order for the payment of any sum of money weekly, monthly, or at any other stated periods ; and
- (c) a letter of credit, that is to say, any instrument by which one person authorizes another to give credit to the person in whose favour it is drawn :

(4) "**Bill of lading**" includes a "through bill of lading," but does not include a mate's receipt :

In the old Act, the definition of "bill of lading" was as follows :
 "' Bill of lading ' means any instrument signed by the owner of a vessel or his agent, acknowledging the receipt of goods therein described, and undertaking to deliver the same at a place and to a person therein mentioned or indicated."

(5) "**Bond**" includes—

- (a) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be ;
- (b) any instrument attested by a witness, and not payable to order or bearer, whereby a person obliges himself to pay money to another ; and
- (c) any instrument so attested, whereby a person obliges himself to deliver grain or other agricultural produce to another :

* Act XXVI. of 1881.

55. (1) Four such indexes shall be made in all registration offices, and shall be named, respectively, Index No. I., Index No. II., Index No. III., and Index No. IV.

Indexes to be made by registering officers, and their contents.

(2) Index No. I. shall contain the names and additions of all persons executing, and of all persons claiming under, every document entered or memorandum filed in Book No. 1.

(3) Index No. II. shall contain such particulars mentioned in section 21 relating to every such document and memorandum as the Inspector-General from time to time directs in that behalf.

(4) Index No. III. shall contain the names and additions of all persons executing every will and authority entered in Book No. 3, and of the executors and persons respectively appointed thereunder, and, after the death of the testator or the donor (but not before), the names and additions of all persons claiming under the same.

(5) Index No. IV. shall contain the names and additions of all persons executing, and of all persons claiming under, every document entered in Book No. 4.

(6) Each Index shall contain such other particulars, and shall be prepared in such form as the Inspector-General from time to time directs.

56. (1) Every Sub-Registrar shall send to the Registrar to whom he is subordinate, at such intervals as the Inspector-General from time to time directs, a copy of all entries made by such Sub-Registrar, during the last of such intervals, in Indexes Nos. I., II., and III.

Copy of entries in Indexes Nos. I., II., and III. to be sent by Sub-Registrar to Registrar, and filed.

(2) Every Registrar receiving such copy shall file it in his office.

57. (1) Subject to the previous payment of the fees payable in that behalf, the Books Nos. 1 and 2 and the Indexes relating to Book No. 1 shall be at all times open to inspection by any person applying to inspect the same; and, subject to the provisions of section 62, copies of entries in such books shall be given to all persons applying for such copies.

(2) Subject to the same provisions, copies of entries in Book No. 3 and in the Index relating thereto shall be given to the

In cl. (b), after the words, "appoint in this behalf," the words "by name or in virtue of his office," have been omitted.

(10) "**Conveyance**" *includes a conveyance on sale and every instrument by which property, whether moveable or immoveable, is transferred inter vivos, and which is not otherwise specifically provided for by Schedule 1.*

The old definition of "conveyance" was as follows "(9) 'Conveyance means any instrument by which property (whether moveable or immoveable) is transferred on sale.'"

(11) "**Duly stamped**," as applied to an instrument, means *that the instrument bears an adhesive or impressed stamp of not less than the proper amount, and that such stamp has been affixed or used in accordance with the law for the time being in force in British India :*

In the old Act, the definition of "duly stamped" was as follows "(10) 'Duly stamped,' as applied to an instrument, means stamped, or written upon paper bearing an impressed stamp, in accordance with the law in force in British India when such instrument was executed or first executed."

(12) "**Executed**" and "**execution**" used with *reference to instruments, mean "signed" and "signature" :*

(13) "**Impressed stamp**" *includes—*

- (a) *labels affixed and unpressed by the proper officer, and*
- (b) *stamps embossed and engraved on stamped paper.*

(14) "**Instrument**" *includes every document by which any right or liability is or purports to be created, transferred, limited, extended, extinguished or recorded*

(15) "**Instrument of partition**" means any instrument whereby co-owners of any property divide or agree to divide such property in severalty, and includes also a final order for effecting a partition passed by any Revenue-authority or any Civil Court and an award by an arbitrator directing a partition.

The italicized words in the above definition are new.

(16) "**Lease**" means a lease of immoveable property, and includes also—

- (a) a patta ;
- (b) a kabuliyat or other undertaking in writing, not being a counterpart of a lease, to cultivate, occupy, or pay or deliver rent for, immoveable property ;

60. (1) After such of the provisions of sections 34, 35, 58, and 59 as apply to any document presented for registration have been complied with, the registering officer shall endorse thereon a certificate containing the word "registered," together with the number and page of the book in which the document has been copied.

(2) Such certificate shall be signed, sealed, and dated by the registering officer, and shall then be admissible for the purpose of proving that the document has been duly registered in manner provided by this Act, and that the facts mentioned in the endorsements referred to in section 59 have occurred as therein mentioned.

61. (1) The endorsements and certificate referred to and mentioned in sections 59 and 60 shall thereupon be copied into the margin of the Register-book, and the copy of the map or plan (if any) mentioned in section 21 shall be filed in Book No. 1.

(2) The registration of the document shall thereupon be deemed complete, and the document shall then be returned to the person who presented the same for registration, or to such other person (if any) as he has nominated in writing in that behalf on the receipt mentioned in section 52.

62. (1) When a document is presented for registration under section 19, the translation shall be transcribed in the register of documents of the nature of the original, and together with the copy referred to in section 19, shall be filed in the registration office.

(2) The endorsements and certificate respectively mentioned in sections 59 and 60 shall be made in the original, and, for the purpose of making the copies and memoranda required by sections 57, 64, 65, and 66, the translation shall be treated as if it were the original.

63. (1) Every registering officer may at his discretion administer an oath to any person examined by him under the provisions of this Act.

Power to administer oaths and record of substance of statement.

(2) Every such officer may also at his discretion record a note of the substance of the statement made by each such person, and such statement shall be read over, or (if made in a language with

- (b) includes any insurance of goods, merchandise or property for any transit which includes, not only a sea-risk *within the meaning of clause (a)*, but also any other risk incidental to the transit insured from the commencement of the transit to the ultimate destination covered by the insurance :

Where any person, in consideration of any sum of money paid or to be paid for additional freight or otherwise, agrees to take upon himself any risk attending goods, merchandise, or property of any description whatever while on board of any ship or vessel, or engages to indemnify the owner of any such goods, merchandise, or property from any risk, loss, or damage, such agreement or engagement shall be deemed to be a contract for sea-insurance :

In the former Act the definition of "policy of sea-insurance" was included in the definition of "policy of insurance," and was immediately after sub-clause (c) of the present cl (19), and ran thus: ". . . It (*i.e.*, policy of insurance) includes also a policy of sea-insurance, such a policy (*a*) meaning any insurance made upon any ship or vessel," &c The rest of the words are in sub-clauses (a) and (b), and in the last para. of cl. (20), except the italicized words, which are new.

(21) "Power-of-attorney" *includes* any instrument (not chargeable with a fee under the law* relating to court-fees for the time being in force) empowering a specified person to act *for*, and in the *name* of, the person executing it :

In the definition of "power-of-attorney," the italicized word *includes* has been substituted for the word "means;" the italicized words *for*, and, after "act," are new, and the italicized word *name* has been substituted for "stead"

(22) "Promissory note" *means a promissory note as defined by the Negotiable Instruments Act 1881* ;†

it also includes a note promising the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen :

(23) "Receipt" *includes* any note, memorandum or writing—

- (a) whereby any money, or any bill of exchange, cheque, or promissory note is acknowledged to have been received, or

* Act VII of 1870.

† Act XXVI. of 1881.

" (2) The Registrar shall also forward a copy of such document, together with a copy of the map or plan (if any) mentioned in section 21, to every other Registrar in whose district any part of such property is situate.

(3) Such Registrar, on receiving any such copy, shall file it in his Book No. 1, and shall also send a memorandum of the copy to each of the Sub-Registrars subordinate to him within whose sub-district any part of the property is situate.

(4) Every Sub-Registrar, receiving any memorandum under this section, shall file it in his Book No. 1.

67. On any document being registered under section 30, sub-section (2), a copy of such document, and of the endorsements and certificate thereon, shall be forwarded to every Registrar within whose district any part of the property to which the instrument relates is situate, and the Registrar receiving such copy shall follow the procedure prescribed for him in section 66, sub-section (1).

(E)—Of the Controlling Powers of Registrars and Inspectors-General.

68. (1) Every Sub-Registrar shall perform the duties of his office under the superintendence and control of the Registrar in whose district the office of such Sub-Registrar is situate.

(2) Every Registrar shall have authority to issue (whether on complaint or otherwise) any order consistent with this Act which he considers necessary in respect of any act or omission of any Sub-Registrar subordinate to him, or in respect of the rectification of any error regarding the book or the office in which any document has been registered.

69. (1) The Inspector-General shall exercise a general superintendence over all the registration-offices in the territories under the Local Government, and shall have power from time to time to make rules consistent with this Act—

(a) providing for the safe custody of books, papers, and documents, and also for the destruction of such books, papers, and documents as need no longer be kept ;

duty of the amount indicated in *that* schedule as the proper duty therefor respectively, that is to say—

- (a) Every instrument mentioned in that schedule which, not having been previously executed by any person, is executed in British India on or after the first day of *July, 1899*;
- (b) every bill of exchange, cheque, or promissory note drawn or made out of British India on or after that day, and accepted or paid, or presented for acceptance or payment, or endorsed, transferred, or otherwise negotiated, in British India; and
- (c) every instrument (other than a bill of exchange, cheque, or promissory note) mentioned in that schedule, which, not having been previously executed by any person, is executed out of British India on or after that day, relates to any property situate, or to any matter or thing done or to be done, in British India, and is received in British India:

Provided that no duty shall be chargeable in respect of—

(1) any instrument executed by, or on behalf of, or in favour of, Government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument;

(2) any instrument for the sale, transfer, or other disposition, either absolutely or by way of mortgage or otherwise, of any ship or vessel, or any part-interest, share, or property of, or in any ship or vessel registered under the Merchant Shipping Act, 1894,* or under Act XIX. of 1838, or the Indian Registration of Ships Act, 1841,† as amended by subsequent Acts.

4. (1) Where, in the case of any sale, mortgage, or settlement,

Several instruments used in single transaction of sale, mortgage, or settlement. several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed in Schedule I., for the conveyance, mortgage, or settlement, and each of the other instruments shall be chargeable with a duty of one rupee instead of the duty (if any) prescribed for it in that schedule.

* 57 & 58 Vict., c. 60.

† Act X. of 1841.

person executing or claiming under the document, shall, without payment and unnecessary delay, give him a copy of the reasons so recorded.

(2) No registering officer shall accept for registration a document so endorsed unless and until, under the provisions hereinafter contained, the document is directed to be registered.

72. (1) Except where the refusal is made on the ground of denial of execution, an appeal shall lie against an order of a Sub-Registrar refusing to admit a document to registration (whether the registration of such document is compulsory or optional) to the Registrar to whom such Sub-Registrar is subordinate if presented to such Registrar within thirty days from the date of the order; and the Registrar may reverse or alter such order.

Appeal to Registrar from orders of Sub-Registrar refusing registration on ground other than denial of execution.

(2) If the order of the Registrar directs the document to be registered, and the document is duly presented for registration within thirty days after the making of such order, the Sub-Registrar shall obey the same, and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59, and 60; and such registration shall take effect as if the document had been registered when it was first duly presented for registration.

73. (1) When a Sub-Registrar has refused to register a document on the ground that any person by whom it purports to be executed, or his representative or assign, denies its execution, any person claiming under such document or his representative, assign, or agent authorized as aforesaid may, within thirty days after the making of the order of refusal, apply to the Registrar to whom such Sub-Registrar is subordinate in order to establish his right to have the document registered.

Application to Registrar where Sub-Registrar refuses to register on ground of denial of execution.

(2) Such application shall be in writing, and shall be accompanied by a copy of the reasons recorded under section 71, and the statements in the application shall be verified by the applicant in manner required by law for the verification of plaints.

74. In such case, and also where such denial as aforesaid is made before a Registrar in respect of a document presented for registration to him, the Registrar shall, as soon as conveniently may be, enquire—

Procedure of Registrar on such application.

(a) whether the document has been executed;

(2) Where any sea-insurance is made for or upon a voyage, and also for time, or to extend to or cover any time beyond thirty days after the ship shall have arrived at her destination and been there moored at anchor, the policy shall be charged with duty as a policy for or upon a voyage, and also with duty as a policy for time.

In s. 7, the italicized figures 506 have been substituted for the figures "55," the words and figures, "Merchant Shipping Act, 1892," have been substituted for the words and figures, "Merchant Shipping Act Amendment Act, 1862," and the word *sea-policy*, has throughout been substituted for the words, "policy of sea-insurance."

8. (1) Notwithstanding anything in this Act, any local authority raising a loan under the provisions of the Local Authorities' Loans Act, 1879,* or of any other law for the time being in force, by the issue of bonds, debentures, or other *securities*, shall, in respect of such loan, be chargeable with a duty of eight annas per centum on the total amount of the bonds, debentures, or other *securities* issued by it, and such bonds, debentures, or other *securities* need not be stamped, and shall not be chargeable with any further duty on renewal, consolidation, subdivision, or otherwise.

(2) The provisions of section (1) exempting certain bonds, debentures, or other *securities* from being stamped and from being chargeable with certain further duty shall apply to the bonds, debentures, or other *securities* of all outstanding loans of the kind mentioned therein, and all such bonds, debentures, or other *securities* shall be valid, whether the same are stamped or not:

Provided that nothing herein contained shall exempt the local authority which has issued such bonds, debentures, or other *securities*, from the duty chargeable in respect thereof prior to the twenty-sixth day of March 1897, when such duty has not already been paid or remitted by order issued by the Governor-General in Council.

(3) In the case of wilful neglect to pay the duty required by this section, the local authority shall be liable to forfeit to the Government a sum equal to ten per centum upon the amount of duty payable, and a like penalty for every month after the first month during which the neglect continues.

* Act XI. of 1879

such document, or his representative, assign, or agent, may, within thirty days after the making of the order of refusal, institute in the Civil Court, within the local limits of whose original jurisdiction is situate the office in which the document is sought to be registered, a suit for a decree directing the document to be registered in such office if it be duly presented for registration within thirty days after the passing of such decree.

(2) The provisions contained in sub-sections (2) and (3) of section 75 shall, *mutatis mutandis*, apply to all documents presented for registration in accordance with any such decree, and, notwithstanding anything contained in this Act, the document shall be receivable in evidence in such suit.

PART XIII.

OF THE FEES FOR REGISTRATION, SEARCHES, AND COPIES.

78. Subject to the approval of the Governor-General in Council, the Local Government shall prepare a table of fees payable—

- (a) for the registration of documents ;
- (b) for searching the registers ;
- (c) for making or granting copies of reasons, entries, or documents, before, on, or after registration ;
- and of extra or additional fees payable—
 - (d) for every registration under section 30 ;
 - (e) for the issue of commissions ;
 - (f) for filing translations ;
 - (g) for attending at private residences ;
 - (h) for the safe custody and return of documents ; and
 - (i) for such other matters as appear to the Local Government necessary to effect the purposes of this Act.

79. A table of the fees so payable shall be published in the official gazette, and a copy thereof in English and the vernacular language of the district shall be exposed to public view in every registration-office.

- (c) in the case of *bills of exchange or promissory notes written in any Oriental language*—the size of the paper on which they are written.

The italicized words in cl. (c) have been substituted for the word "hundis."

11. The following instruments may be stamped with adhesive stamps, namely:—

- (a) instruments chargeable with the duty of one anna, "or half an anna" except parts of bills of exchange payable otherwise than on demand and drawn in sets;
- (b) bills of exchange, cheques, and promissory notes drawn or made out of British India;
- (c) entry as an advocate, vakil, or attorney on the roll of a High Court;
- (d) notarial acts; and
- (e) transfers by endorsement of shares *in any incorporated company or other body corporate.*

The italicized words in cl. (e) have been substituted for the words, "of public Companies and Associations."

12. (1) (a) Whoever affixes any adhesive stamp to any instrument chargeable with duty, and which has been executed by any person, shall, when affixing such stamp, cancel the same so that it cannot be used again: and

(b) whoever executes any instrument on any paper bearing an adhesive stamp shall, at the time of execution, unless such stamp has been already cancelled in manner aforesaid, cancel the same so that it cannot be used again.

(2) Any instrument bearing an adhesive stamp which has not been cancelled so that it cannot be used again shall, so far as such stamp is concerned, be deemed to be unstamped.

(3) *The person required by sub-section (1) to cancel an adhesive stamp may cancel it by writing on or across the stamp his name or initials, or the name or initials of his firm with the true date of his so writing, or in any other effectual manner.*

* The words have been added by Act V. of 1906, s. 3.

83. (1) A prosecution for any offence under this Act coming to the knowledge of a registering officer in his official capacity may be commenced by or with the permission of the Inspector-General, the Branch Inspector-General of Sindh, the Registrar, or the Sub-Registrar, in whose territories, district, or sub-district, as the case may be, the offence has been committed.

(2) Offences punishable under this Act shall be triable by any Court or officer exercising powers not less than those of a Magistrate of the second class.

84. (1) Every registering officer appointed under this Act shall be deemed to be a public servant within the meaning of the Indian Penal Code.*

(2) Every person shall be legally bound to furnish information to such registering officer when required by him to do so.

(3) In section 228 of the Indian Penal Code,* the words "judicial proceeding" shall be deemed to include any proceeding under this Act.

PART XV.

MISCELLANEOUS.

85. Documents (other than wills) remaining unclaimed in any registration-office for a period exceeding two years may be destroyed.

Registering officer not liable for thing *bona fide* done or refused in his official capacity.

86. No registering officer shall be liable to any suit, claim, or demand by reason of anything in good faith done or refused in his official capacity.

87. Nothing done in good faith pursuant to this Act or any Act hereby repealed, by any registering officer, shall be deemed invalid merely by reason of any defect in his appointment or procedure.

Nothing so done invalidated by defect in appointment or procedure.

* Act XLV. of 1860.

(2) Where any such instrument cannot, with reference to the description of stamp prescribed therefor, be duly stamped by a private person, it may be taken within the said period of three months to the Collector, *who* shall stamp the same in such manner as the Governor General in Council may by rule prescribe, with a stamp of such value as the person so taking such instrument may require and pay for.

In s. 18 (2) the italicized word *who* has been substituted for *and he*.

19. The first holder in British India of any bill of exchange, Bills, cheques, and notes cheque, or promissory note drawn or drawn out of British India. made out of British India shall, before he presents the same for acceptance or payment, or endorses, transfers, or otherwise negotiates the same in British India, affix thereto the proper stamp, and cancel the same:

Provided that—

(a) if, at the time any such bill *of exchange*, cheque, or note comes into the hands of any holder thereof in British India, the proper adhesive stamp is affixed thereto and cancelled in manner prescribed by section 12, and such holder has no reason to believe that such stamp was affixed or cancelled otherwise than by the person and at the time required by this Act, such stamp shall, so far as relates to such holder, be deemed to have been duly affixed and cancelled.

(b) Nothing contained in this proviso shall relieve any person from any penalty incurred by him for omitting to affix or cancel a stamp.

In the proviso, the italicized words *of exchange* are new, and the italicized figures 12 have been substituted for 11

D.—Of Valuations for Duty.

S 19 of the old Act has been omitted It ran as follows —

"19 *Conversion of amount expressed in certain currencies.*—Where an instrument is chargeable with *ad-valorem* duty in respect of an amount expressed in pounds sterling, pounds currency, francs, or dollars, such duty shall be calculated on the value of such money in the currency of British India according to the following scale —

"One pound sterling or pound currency is equivalent to ten rupees

"One hundred francs are equivalent to forty rupees.

"One Mexican or China dollar is equivalent to two rupees four annas."

Act II, 1899.—2.

gaged is situate, and such registering officer shall file the copy or copies, as the case may be, in his Book No. 1.

(4) Every Revenue-officer granting a certificate of sale to the purchaser of immoveable property sold by public auction shall send a copy of the certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the property comprised in the certificate is situate, and such officer shall file the copy in his Book No. 1.

Exemptions from Act.

90. (1) Nothing contained in this Act, or in the Indian Registration Act, 1877,* or in the Indian Registration Act, 1871,† or in any Act thereby repealed, shall be deemed to require, or to have at any time required, the registration of any of the following documents or maps, namely—

- (a) documents issued, received, or attested by any officer engaged in making a settlement or revision of settlement of land-revenue, and which form part of the records of such settlement; or
- (b) documents and maps issued, received, or authenticated by any officer engaged on behalf of Government in making or revising the survey of any land, and which form part of the record of such survey; or
- (c) documents which, under any law for the time being in force, are filed periodically in any revenue-office by patwaris or other officers charged with the preparation of village-records; or
- (d) sanads, inam title-deeds, and other documents purporting to be or to evidence grants or assignments by Government of land, or of any interest in land; or
- (e) notices given under section 74 or section 76 of the Bombay Land-revenue Code, 1879,‡ of relinquishment of occupancy by occupants, or of alienated land by holders of such land.

* Act III. of 1877.

† Act VIII. of 1871.

‡ Bom. Act V. of 1879.

or to be advanced by way of loan, or for an existing or future debt; or

(b) makes redeemable or qualifies a duly stamped transfer, intended as a security, of any marketable security ;

it shall be chargeable with duty as if it were an agreement or memorandum of an agreement chargeable with duty under Article No. 5 (b) of Schedule I.

(a) A release or discharge of any such instrument shall only be chargeable with the like duty.

24. Where any property is transferred to any person in consideration, wholly or in part, of any debt due to him, or subject, either certainly or contingently, to the payment or transfer of any money or stock, whether being or constituting a charge or incumbrance upon the property or not, such debt, money, or stock is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the transfer is chargeable with *ad-valorem* duty:

Provided that nothing in this section shall apply to any such certificate of sale as is mentioned in article 18 of Schedule I.

Explanation.—In the case of a sale of property subject to a mortgage or other incumbrance, any unpaid mortgage-money or money charged, together with the interest (if any) due on the same, shall be deemed to be part of the consideration for the sale :

Provided that, where property subject to a mortgage is transferred to the mortgagee, he shall be entitled to deduct from the duty payable on the transfer the amount of any duty already paid in respect of the mortgage.

Illustrations.

(1) A owes B Rs 1,000. A sells a property to B, the consideration being Rs 500 and the release of the previous debt of Rs. 1,000. Stamp-duty is payable on Rs 1,500.

(2) A sells a property to B for Rs. 500 which is subject to a mortgage to C for Rs 1,000, and unpaid interest Rs. 200. Stamp-duty is payable on Rs. 1,700.

(3) A mortgages a house of the value of Rs. 10,000 to B for Rs. 5,000. B afterwards buys the house from A. Stamp-duty is payable on Rs 10,000, less the amount of stamp-duty already paid for the mortgage.

In s. 24, the italicized portion (including the *illustrations*) is new.

THE SCHEDULE.

REPEAL OF ENACTMENTS.

(See section 93.)

Year.	No.	Short title.	Extent of repeal.
1877	III.	The Indian Registration Act, 1877.	The whole.
1879	XII.	The Registration and Limitation Acts Amendment Act, 1879.	So much as is unrepealed.
1883	XIX.	The Land Improvement Loans Act, 1883.	So much of section 12 as is unrepealed.
1886	VII.	The Indian Registration Act, 1886.	The whole.
1888	VII.	The Civil Procedure Code Amendment Act, 1888.	So much as is unrepealed.
1891	XII.	The Amending Act, 1891.	In the second schedule, the entries relating to Act III. of 1877.
1899	XVII.	The Indian Registration Amendment Act, 1899	The whole.

the rent, it shall be sufficient to have estimated such royalty or the value of such share, for the purpose of stamp-duty,—

(a) when the lease has been granted by or on behalf of the Secretary of State in Council, at such amount or value as the Collector may having regard to all the circumstances of the case, have estimated as likely to be payable by way of royalty or share to the said Secretary of State in Council under the lease, or,

(b) when the lease has been granted by any other person, at twenty thousand rupees a year;

and the whole amount of such royalty or share, whatever it may be, shall be claimable under such lease."

Provided also that, where proceedings have been taken in respect of an instrument under section 31 or 41, the amount certified by the Collector shall be deemed to be the stamp actually used at the date of execution.

In s. 26, the italicized words, *the commencement of this Act*, have been substituted for the words, "this Act comes into force," and the two provisos are new

27. The consideration, if any, and all other facts and circum-

Facts affecting duty to be set forth in instrument. stances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein.

28. (1) Where any property has been contracted to be sold

Direction as to duty in case of certain conveyances. for one consideration for the whole, and is conveyed to the purchaser in separate parts by different instruments, the consideration shall be apportioned in such manner as the parties think fit, *provided* that a distinct consideration for each separate part is set forth in the conveyance relating thereto, and such conveyance shall be chargeable with *ad-valorem* duty in respect of such distinct consideration.

(2) Where property contracted to be purchased for one consideration for the whole, by two or more persons jointly, or by any person for himself and others, or wholly for others, is conveyed in parts by separate instruments to the persons by or for whom the same was purchased, for distinct parts of the consideration, the conveyance of each separate part shall be chargeable with *ad-valorem* duty in respect of the distinct part of the consideration therein specified.

"No. 6.* (*Agreement relating to Deposit of Title-deeds, Pawn or Pledge*),"

No. 13. (*Bill of exchange*),

No. 15. (*Bond*),

No. 16. (*Bottomry Bond*),

No. 26. (*Customs Bond*),

No. 27. (*Debenture*),

No. 32. (*Further charge*),

No. 34. (*Indemnity Bond*),

No. 40. (*Mortgage-deed*),

No. 49. (*Promissory note*),

No. 55. (*Release*),

No. 56. (*Respondentia Bond*),

No. 57. (*Security Bond or mortgage-deed*),

No. 58. (*Settlement*),

No. 62. (a) (*Transfer of shares in an incorporated company or other body corporate*),

(b) *Transfer of debentures being marketable securities, whether the debenture is liable to duty or not, except debentures provided for by section 8.*

(c) *Transfer of any interest secured by a bond, mortgage deed, or policy of insurance,*

by the person drawing, making, or executing such instrument :

†(b) in the case of a policy of insurance other than fire-insurance—by the person effecting the insurance ;

†(bb) in the case of a policy of fire-insurance—by the person issuing the policy.

(c) in the case of a conveyance (*including a re-conveyance of mortgaged property*)—by the grantee ; in the case of a lease or agreement to lease—by the lessee or intended lessee :

* These words and figure have been substituted for the original by Act XV of 1904, s 5

† Clauses (b) and (bb) have been substituted in place of the original cl. (b) by Act V. of 1905, s. 4.

by Regulation XIX., 1810, of the Bengal Code (*for the due appropriation of the rents and produce of lands granted for the support of Mosques, Hindu Temples, Colleges, and other purposes; for the maintenance and repair of Bridges, Sarais, Katiras, and other public buildings; and for the custody and disposal of Nazul Property or Escheats*), and Regulation VII., 1817, of the Madras Code (*for the due appropriation of the rents and produce of lands granted for the support of Mosques, Hindu Temples, and colleges, or other public purposes; for the maintenance and repair of Bridges, Choultries, or Chattrams, and other public buildings; and for the custody and disposal of Escheats*), so far as those duties embrace the superintendence of lands granted for the support of mosques or Hindu temples, and for other religious uses; the appropriation of endowments made for the maintenance of such religious establishments; the repair and preservation of buildings connected therewith, and the appointment of trustees or managers thereof; or involve any connection with the management of such religious establishments; It is enacted as follows:—

1. [*Repeal of parts of Bengal Regulation XIX. of 1810 and Madras Regulation VII. of 1817.*—*[Repealed by the Repealing Act (XIV. of 1870).]*

Interpretation-clause.

2. In this Act—

words importing the singular number shall include the plural,
Number. and words importing the plural number shall include the singular:

Gender. words importing the masculine gender shall include females:†

the words "Civil Court" and "Court" shall mean the principal
"Civil Court" and principal Court of original civil jurisdiction
"Court." in the district in which the mosque, temple, or religious establishment is situate, relating to which, or to the endowment whereof, any suit shall be instituted or application made under the provisions of this Act.

* In the preamble, the words and figures, "and whereas it is expedient for that purpose to repeal so much of Regulation XIX., 1810, of the Bengal Code, and Regulation VII., 1817, of the Madras Code, as relate to endowments for the support of mosques, Hindu temples, or other religious purposes," have here been omitted, being repealed by the Repealing Act (XVI. of 1874).

† Compare s. 13 of the General Clauses Act (X. of 1897).

CHAPTER III.

ADJUDICATION AS TO STAMPS.

31. (1) When any instrument, whether executed or not, and whether previously stamped or not, is brought to the Collector, and the person bringing it applies to have the opinion of that officer as to the duty (if any) with which it is chargeable, and pays a fee of such amount (not exceeding five rupees, and not less than eight annas) as the Collector may in each case direct, the Collector shall determine the duty (if any) with which, in his judgment, the instrument is chargeable.

(2) *For this purpose the Collector may require to be furnished with an abstract of the instrument, and also with such affidavit or other evidence as he may deem necessary to prove that all the facts and circumstances affecting the chargeability of the instrument with duty, or the amount of the duty with which it is chargeable, are fully and truly set forth therein, and may refuse to proceed upon any such application until such abstract and evidence have been furnished accordingly:*

Provided that—

- (a) no evidence furnished in pursuance of this section shall be used against any person in any civil proceeding, except in an enquiry as to the duty with which the instrument to which it relates is chargeable; and
- (b) every person by whom any such evidence is furnished shall, on payment of the full duty with which the instrument to which it relates is chargeable, be relieved from any penalty *which* he may have incurred under this Act by reason of the omission to state truly in such instrument any of the facts or circumstances aforesaid.

The italicized words in s. 31 (2) have been substituted for the words, "and may for this purpose," and the italicized word *which* in cl. (b) of the proviso is new.

32. (1) When an instrument brought to the Collector under section 31 is, in his opinion, one of a description chargeable with duty, and

- (a) the Collector determines that it is already fully stamped, or

interested in the mosque, temple, or religious establishment to which such property shall belong, or in the performance of the worship or of the service thereof, or the trusts relating thereto, to apply to the Civil Court to appoint a manager of such mosque, temple, or other religious establishment; and thereupon such Court may appoint such manager to act until some other person shall by suit have established his right of succession to such office.

The manager so appointed by the Civil Court shall have and Powers of managers ap- shall exercise all the powers which, pointed by Court. under this or any other Act, the former trustee, manager, or superintendent, in whose place such manager is appointed by the Court, had or could exercise in relation to such mosque, temple, or religious establishment, or the property belonging thereto.

6. The rights, powers, and responsibilities of every trustee, Rights, &c., of trustees manager, or superintendent, to whom to whom property is trans- the land and other property of any ferred under section 4. mosque, temple, or other religious establishment is transferred in the manner prescribed in section 4 of this Act, as well as the conditions of their appointment, election, and removal, shall be the same as if this Act had not been passed, except in respect of the liability to be sued under this Act, and except in respect of the authority of the Board of Revenue and local agents, given by the Regulations hereby repealed, over such mosque, temple, or religious establishment, and over such trustee, manager, or superintendent, which authority is hereby determined and repealed.

All the powers which might be exercised by any Board or local agent for the recovery of the rent of land or other property transferred under the said section 4 of this Act may, from the date of such transfer, be exercised by any trustee, manager, or superintendent to whom such transfer is made.

7. In all cases described in section 3 of this Act, the Local Appointment of commit- Government shall, once for all, ap- tees. point one or more committees in every division or district, to take the place, and to exercise the powers, of the Board of Revenue and the local agents under the Regulations hereby repealed.

Such committee shall consist of three or more persons, and Constitution and duties shall perform all the duties imposed of committees. on such Board and local agents, except

STAMP
CHAPTER IV

INSTRUMENTS NOT DULY STAMPED

83. (1) Every person having, by law or consent of parties, authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument chargeable in his opinion, with duty, is produced or comes, in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

(2) For that purpose every such person shall examine every instrument so chargeable, and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in British India when such instrument was executed or first executed :

Provided that—

- (a) nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII. or Chapter XXXVI. of the Code of Criminal Procedure, 1898 ; *
- (b) in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.
- (3) For the purposes of this section, in cases of doubt,—
 - (a) the Governor-General in Council may determine what offices shall be deemed to be public offices, and
 - (b) the Local Government may determine who shall be deemed to be persons in charge of public offices.

In cl. (a) of the proviso to s. 33 (2), the italicized words are new.

84. Where any receipt chargeable with a duty of one anna is tendered to or produced before any officer unstampd in the course of the audit of
Special provision as to unstampd receipts.

and whoever shall be then elected under the said rules shall be a member of the committee to fill such vacancy.

If any vacancy as aforesaid shall not be filled up by such
When Court may fill election as aforesaid within three months
vacancy. after it has occurred, the Civil Court, on
the application of any person whatever, may appoint a person to
fill the vacancy, or may order that the vacancy be forthwith filled
up by the remaining members of the committee, with which order
it shall then be the duty of such remaining members to comply;
and, if this order be not complied with, the Civil Court may ap-
point a member to fill the said vacancy.

11. No member of a committee appointed under this Act
No member of committee shall be capable of being, or shall act,
to be also trustee, &c., of also as a trustee, manager, or superin-
mosque, &c. tendent of the mosque, temple, or other
religious establishment for the management of which such com-
mittee shall have been appointed.

12. Immediately on the appointment of a committee as above
On appointment of com- provided for the superintendence of any
mittee, Board and local such mosque, temple, or religious estab-
agents to transfer property. lishment, and for the management of
its affairs, the Board of Revenue, or the local agents acting under
the authority of the said Board, shall transfer to such committee all
landed or other property which, at the time of appointment, shall
be under the superintendence, or in the possession, of the said
Board or local agents, and belonging to the said religious estab-
lishment, except as is hereinafter provided for;

and thereupon, the powers and responsibilities of the Board
Termination of powers and the local agents, in respect to such
and responsibilities of mosque, temple, or religious establish-
Board and agents. ment, and to all land and other property
so transferred, except as above, and except as regards acts done
and liabilities incurred by the said Board or agents, previous to
such transfer, shall cease and determine.

All the powers which might be exercised by any Board or
Commencement of powers local agent for the recovery of the rent
of committee. of land or other property transferred
under this section may, from the date of such transfer, be exercised
by such committee to whom such transfer is made.

- (e) *nothing herein contained shall prevent the admission of and when executed by or any instrument in any on behalf of Government. Court when such instrument has been executed by or on behalf of the Government, or where it bears the certificate of the Collector as provided by section 32 or any other provision of this Act.*

36 *Where* an instrument has been admitted in evidence, such Admission of instrument admission shall not, except as provided *where* not to be questioned. in section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.

In s 36, the italicized word *where* has been substituted for *when*, and the italicized figures 61 have been substituted for 50.

37. *The Governor-General in Council may make rules providing that, where an instrument bears a stamp of sufficient amount, but of improper description, it may, on payment of the duty with which the same is chargeable, be certified to be duly stamped, and any instrument so certified shall then be deemed to have been duly stamped as from the date of its execution.*

38. (1) When the person impounding an instrument under Instruments impounded how section 33 has, by law or consent of dealt with. parties, authority to receive evidence, and admits such instrument in evidence upon payment of a penalty as provided by section 35, *or of duty as provided by section 37*, he shall send to the Collector an authenticated copy of such instrument, together with a certificate in writing, stating the amount of duty and penalty levied in respect thereof, and shall send such amount to the Collector, or to such person as he may appoint in this behalf.

(2) In every other case, the person so impounding an instrument shall send it in original to the Collector.

In s. 38 (1), the italicized figures and words have been substituted for the figures "34"

39. (1) When a copy of an instrument is sent to the Collector Collector's power to refund under section 38, sub-section (1), he may, penalty paid under section 38, if he thinks fit, upon application made to him in this behalf, *or if no application is made, with the consent of the Chief Controlling Revenue-authority,*

Any person having a right of attendance, or having been in the habit of attending at the performance of the worship or service of any mosque, temple, or religious establishment, or of partaking in the benefit of any distribution of alms, shall be deemed to be a person interested within the meaning of the last-preceding section.

16. In any suit or proceeding instituted under this Act, it shall be lawful for the Court, before
Reference to arbitrators. which such suit or proceeding is pending, to order any matter in difference in such suit to be referred for decision to one or more arbitrators.

Whenever any such order shall be made, the provisions of Act VIII. of 1859* applied. Chapter VI.* of the Code of Civil Procedure shall, in all respects, apply to such order and arbitration, in the same manner as if such order had been made on the application of the parties under section 312* of the said Code.

17. Nothing in the last-preceding section shall prevent the parties from applying to the Court, or
*Reference under Act VIII. of 1859.** the Court from making the order of reference, under the said section 312* of the said Code of Civil Procedure.

18. No suit shall be entertained under this Act without a preliminary application being first made to the Court for leave to institute such
Application for leave to institute suits. suit.†

The Court, on the perusal of the application, shall determine whether there are sufficient *prima-facie* grounds for the institution of a suit, and if, in the judgment of the Court, there are such grounds, leave shall be given for its institution.†

* These references to Act VIII. of 1859 (the old Code of Civil Procedure) and Ch. VI. and s. 312 thereof should now be meant respectively to apply to Act V of 1908 (the new Code now in force) and Pt V (s 89) and the Second Schedule (para. 17) of the same—*See* s. 158 of the latter Code.

† The words, "The application may be made upon unstamped paper," and the words, "In calculating the costs at the termination of the suit, the stamp duty on the preliminary application shall be estimated, and shall be added to the costs of the suit," respectively, in paras. 1 and 2 of s. 18, have here been omitted, being repealed by the Court Fees Act (VII. of 1870).

STAMP

section 14, the Collector may, if he thinks fit, remit the whole penalty prescribed by this section.

"13" and "14" substituted for "12" and "13" respectively.

(2) Every certificate under clause (a) of sub-section (1) shall, for the purposes of this Act, be conclusive evidence of the matters stated therein.

"Sub-section (1)" substituted for "this section."

The last para. of the old s. 37 (now s. 40) has been omitted here. It was as follows: "Nothing in this section applies to an instrument chargeable with a duty of one anna only, or to a bill of exchange or promissory note."

(3) *Where an instrument has been sent to the Collector under section 38, sub-section (2), the Collector shall, when he has dealt with it as provided by this section, return it to the impounding officer.*

41. If any instrument chargeable with duty, and not duly

Instruments unduly stamped, stamped, *not being an instrument chargeable with a duty of one anna "or half an anna"* by accident.

only, or a bill of exchange or promissory note, is produced by any person of his own motion before the Collector within one year from the date of its execution or first execution, and such person brings to the notice of the Collector the fact that such instrument is not duly stamped, and offers to pay to the Collector the amount of the proper duty, or the amount required to make up the same, and the Collector is satisfied that the omission to duly stamp such instrument has been occasioned by accident, mistake, or urgent necessity, he may, instead of proceeding under sections 33 and 40, receive such amount, and proceed as next hereinafter prescribed.

"Which is" after first "and" in line 1 of s. 40 omitted; the italics newly inserted, and 40 substituted for "37."

42 (1) When the duty and penalty (if any) leviable in respect

of any instrument have been paid under section 35, section 40, or section 41, the person admitting such instrument in evidence or the Collector, as the case may be, shall certify by endorsement thereon that the proper duty or, as the case may be, the pro-

*These words have been inserted by Act V. of 1906, s. 3

Government not to hold charge henceforth of property for support of any mosque, temple, &c.

22. Except as provided in this Act, it shall not be lawful* for any Government in India, or for any officer of any Government in his official character,

to undertake or resume the superintendence of any land or other property granted for the support of, or otherwise belonging to, any mosque, temple, or other religious establishment, or

to take any part in the management or appropriation of any endowment made for the maintenance of any such mosque, temple, or other establishment, or

to nominate or appoint any trustee, manager, or superintendent thereof, or to be in any way concerned therewith.

23. Nothing in this Act shall be held to affect the provisions of the Regulations mentioned in this Act, except in so far as they relate to mosques, Hindu temples, and other religious establishments; or to prevent the Government from taking such steps as it may deem necessary, under the provisions of the said Regulations, to prevent injury to and preserve buildings remarkable for their antiquity, or for their historical or architectural value, or required for the convenience of the public.

24. The word "India"† in this Act shall denote the territories which are or may become vested in Her Majesty by the Statute of 21 & 22 Vict., c. 106, entitled "An Act for the better government of India."‡

* In s 22, certain formal words, which were repealed by the Peeping Act (XVI of 1874), have here been omitted

† That is, "British India" Compare definitions of "British India" and "India" in s 3 (7) and 3 (27) respectively of the General Clauses Act (X. of 1897)

‡ Short title—"The Government of India Act, 1858"

the provisions of section 29 or any other enactment in force at the time such instrument was executed, some other person was bound to bear the expense of providing the proper stamp for such instrument, the first-mentioned person shall be entitled to recover from such other person the amount of the duty or penalty so paid.

(2) For the purpose of such recovery any certificate granted in respect of such instrument under *this Act* shall be conclusive evidence of the matters therein certified.

(3) *Such amount may if the Court thinks fit, be included in any order as to costs in any suit or proceeding to which such persons are parties, and in which such instrument has been tendered in evidence. If the Court does not include the amount in such order, no further proceedings for the recovery of the amount shall be maintainable.*

In s. 44, sub-s (1), the italicized figures 35 have been substituted for 34 and the italicized words and figures, *section 40, or section 41*, have been substituted for the words and figures, "or section 38," and, in sub-s (2), the italicized words, *this Act*, have been substituted for the words and figures "section 29"

45. (1) *Where* any penalty is paid under *section 35* or section 40, the Chief Controlling Revenue-authority may, upon application in writing made within one year from the date of the payment, refund such penalty wholly or in part.

(2) *Where, in the opinion of the Chief Controlling Revenue-authority, stamp-duty in excess of that which is legally chargeable has been charged and paid under section 35, or section 40, such authority may, upon application in writing made within three months of the order charging the same, refund the excess.*

In s 45 (1), the italicized word *Where* has been substituted for "When," and the figures and words, 35, or section 40, have been substituted for "34 or 37"

46. (1) If any instrument sent to *the* Collector under *section 38, sub-section (2)*, is lost, destroyed, or damaged during transmission, the person sending the same shall not be liable for such loss, destruction, or damage.

(2) When any instrument is about to be so sent, the person from whose possession it came into the hands of the person impounding the same may require a copy thereof to be made at the expense of such

on such question. A copy of such petition shall be served upon, and the hearing thereof may be attended by, such other persons interested in the question as the Court thinks fit.

Any opinion given by the Court on an application under this section shall be deemed to have the force of a declaratory decree.*

The costs of every application under this section shall be in the discretion of the Court.

THE SCHEDULE.

(See section 3.)

Memorandum of the appointment of new trustees of the *(describe the church chapel, or other building, and property)* situate at a meeting duly convened and held for that purpose *(in the vestry of the said)* on the *day of 19*, A. B., of *Chairman.*

Names and description of all the trustees on the constitution or last appointment of trustees, made the *day of*

(Here insert the same)

Names and descriptions of all the trustees in whom the said *(Chapel and property)* now become legally vested.

First.—Old continuing trustees :—

(Here insert the same)

Second.—New trustees now chosen and appointed. —

(Here insert the same.)

Dated this *day of 19*.

Signed by the said A. B. as Chairman of the said Meeting, at and in the presence of the said Meeting on the day and year aforesaid in the presence of—

C. D.
—E. F.

A. B.,
Chairman of the
said Meeting.

* As to effect of a declaratory decree, see s. 43 of the Specific Relief Act (I. of 1877).

for impressed stamps spoiled in the cases hereinafter mentioned, namely:—

The italicized words have been substituted for the words "which" the Collector may require, allowance shall be made by the Collector.

- (a) the stamp on any paper inadvertently and undesignedly spoiled, obliterated, or, by *error in writing or any other means*, rendered unfit for the purpose intended before any instrument written thereon is executed by any person:

The italics newly inserted.

- (b) *the stamp on any document which is written out wholly or in part, but which is not signed or executed by any party thereto:*

- (c) *in the case of bills of exchange, cheques, or promissory notes—*

- (1) *the stamp on any bill of exchange or cheque signed by or on behalf of the drawer which has not been accepted or made use of in any manner whatever, or delivered out of his hands for any purpose other than by way of tender for acceptance: provided that the paper on which any such stamp is impressed does not bear any signature intended as or for the acceptance of any bill of exchange or cheque to be afterwards written thereon;*

The italicized words have been substituted for the words, "The stamp used or intended to be used for any bill of exchange, cheque, or promissory note, signed by or on behalf of the drawer or intended drawer, but not delivered out of his hands to the payee, or intended payee, or any person on his behalf, or deposited with any person as a security for the payment of money, or any way negotiated, issued, or put in circulation, or made use of in any other manner, and which, being a bill of exchange or cheque, has not been accepted by the drawee, and."

- (2) *the stamp on any promissory note signed by or on behalf of the maker which has not been made use of in any manner whatever, or delivered out of his hands;*

- (3) *the stamp used or intended to be used for any bill of exchange, cheque, or promissory note signed by or on behalf of the drawer thereof, but which, from any omission or error, has been omitted*

with the Registrar of Joint-stock Companies,* form themselves into a society, under this Act.

Memorandum of association.

2. The memorandum of association shall contain the following things (that is to say) :—

The name of the society :

The objects of the society :

The names, addresses, and occupations of the governors, council, directors, committee, or other governing body to whom, by the rules of the society, the management of its affairs is entrusted. A copy of the rules and regulations of the society, certified to be a correct copy by not less than three of the members of the governing body, shall be filed with the memorandum of association.

3. Upon such memorandum and certified copy being filed, the Registrar shall certify under his hand that the society is registered under this Act. There shall be paid to the Registrar for every such registration a fee of fifty rupees, or such smaller fee as the Governor-General of India in Council may, from time to time, direct: and all fees so paid shall be accounted for to Government.

4. Once in every year, on or before the fourteenth day succeeding the day on which, according to the rules of the society, the annual general meeting of the society is held, or, if the rules do not provide for an annual general meeting, in the month of January, a

(6) The District of Silhat (see *Gazette of India*, 1879, Pt. I, p. 631).

(7) The rest of Asam (except the North Lushai Hills) (see *Gazette of India*, 1897, Pt. I, p. 299).

It has been extended, by notification under s. 5 of the last-mentioned Act, to the following Scheduled Districts, namely :—

(1) Sindh (see *Gazette of India*, 1880, Pt. I, p. 672).

(2) Kumaon and Garhwal (see *Gazette of India*, 1876, Pt. I, p. 606).

(3) Ajmere and Merwara (see *Gazette of India*, 1878, Pt. I, p. 380).

It has been declared, by notification under s. 3 (b) of the same Act, not to be in force in the Scheduled District of Lahaul—See *Gazette of India*, 1886, Pt. I, p. 301.

* In s. 1, the words, “under Act XIX of 1857,” repealed by the Repealing Act (XVI. of 1874), have here been omitted. See now the Indian Companies Act (VI. of 1882), s. 255

becomes useless in consequence of the transaction intended to be thereby effected being effected by some other instrument between the same parties and bearing a stamp of not less value :

The italicized words have been substituted for "duly stamped."

(7) *is deficient in value, and the transaction intended to be thereby effected has been effected by some other instrument between the same parties and bearing a stamp of not less value :*

(8) *is inadvertently and undesignedly spoiled, and in lieu whereof another instrument made between the same parties and for the same purpose is executed and duly stamped :*

Provided that, in the case of an executed instrument, no legal proceeding has been commenced in which the instrument could or would have been given or offered in evidence, and that the instrument is given up to be cancelled.

The above proviso has been substituted for the two provisos to s. 51 of the old Act. They were as follow :—

"Provided that, in the case of an executed instrument—

(a) such instrument is given up to be cancelled :

(b) the application for relief is made within six months after the date of the instrument; or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed, except where, from unavoidable circumstances, any instrument for which another instrument has been substituted cannot be given up to be cancelled within the aforesaid period, and in that case within six months after the date or execution of the substituted instrument; and except where the spoiled instrument has been sent out of British India, and in that case within six months after it has been received back in British India :

Provided also that, in the case of stamped paper not having any executed instrument written thereon, the application for relief is made within six months after the stamp has been spoiled as aforesaid.

Explanation.—The certificate of the Collector under section 32, that the full duty with which an instrument is chargeable has been paid, is an impressed stamp within the meaning of this section.

Application for relief under section 49 when to be made. **50.** The application for relief under section 49 must be made within the following periods, that is to say :—

9. Whenever, by any bye-law duly made in accordance with the Recovery of penalty accruing under bye-law. rules and regulations of the society, or, if the rules do not provide for the making of bye-laws, by any bye-law made at a general meeting of the members of the society convened for the purpose (for the making of which the concurrent votes of three-fifths of the members present at such meeting shall be necessary), any pecuniary penalty is imposed for the breach of any rule or bye-law of the society, such penalty, when accrued, may be recovered in any Court having jurisdiction where the defendant shall reside, or the society shall be situate, as the governing body thereof shall deem expedient.

10. Any member who may be in arrear of a subscription which, according to the rules of the society, he is bound to pay, or who shall possess himself of, or detain, any property of the society in a manner or for a time contrary to such rules, or shall injure or destroy any property of the society, may be sued for such arrear or for the damage accruing from such detention, injury, or destruction of, property in the manner hereinbefore provided.

But, if the defendant shall be successful in any suit or other proceeding brought against him at the instance of the society, and shall be adjudged to recover his costs, he may elect to proceed to recover the same from the officer in whose name the suit shall be brought, or from the society, and, in the latter case, shall have process against the property of the said society in the manner above described.

11. Any member of the society who shall steal, purloin, or embezzle any money or other property, or wilfully and maliciously destroy or injure any property of such society, or shall forge any deed, bond, security for money, receipt, or other instrument, whereby the funds of the society may be exposed to loss, shall be subject to the same prosecution, and, if convicted, shall be liable to be punished in like manner, as any person not a member would be subject and liable to in respect of the like offence.

12. Whenever it shall appear to the governing body of any society registered under this Act, which has been established for any particular purpose or purposes, that it is advisable to alter, extend, or abridge such purpose to or for other

(b) when any stamp used for an instrument has been inadvertently rendered useless under section 15, owing to such instrument having been written in contravention of the provisions of section 13,

the Collector may, on application made within six months after the date of the instrument, or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed, and upon the instrument, if chargeable with duty, being re-stamped with the proper duty, cancel and allow as spoiled the stamp so misused or rendered useless.

The italicized figures 15 and 13 in cl. (b) have been substituted for "14" and "12," respectively.

Allowance for spoiled or misused stamps how to be made.

53. In any case in which allowance is made for spoiled or misused stamps, the Collector may give in lieu thereof—

- (a) other stamps of the same description and value, or
- (b) if required and he thinks fit, stamps of any other description to the same amount in value, or,
- (c) at his discretion, the same value in money, deducting one anna for each rupee or fraction of a rupee.

54. When any person is possessed of a stamp or stamps which have not been spoiled or rendered unit or useless for the purpose intended, but for which he has no immediate use, the Collector shall repay to such person the value of such stamp or stamps in money, deducting one anna for each rupee or portion of a rupee, upon such person delivering up the same to be cancelled, and proving to the Collector's satisfaction—

- (a) that such stamp or stamps were purchased by such person with a *bona-fide* intention to use them, and
- (b) that he has paid the full price thereof, and
- (c) that they were so purchased within the period of six months next preceding the date on which they were so delivered:

Provided that, where the person is a licensed vendor of stamps, the Collector may, if he thinks fit, make the repayment of the sum actually paid by the vendor without any such deduction as aforesaid.

14. If, upon the dissolution of any society registered under this Act, there shall remain, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to, or distributed among, the members of the said society or any of them, but shall be given to some other society, to be determined by the votes of not less than three-fifths of the members present, personally or by proxy, at the time of the dissolution, or, in default thereof, by such Court as aforesaid :

Provided, however, that this clause shall not apply to any society which shall have been founded or established by the contributions of shareholders in the nature of a Joint-stock Company.

15. For the purposes of this Act, a member of a society shall be a person who, having been admitted there according to the rules and regulations thereof, shall have paid a subscription, or shall have signed the roll or list of members thereof, and shall not have resigned in accordance with such rules and regulations; but, in all proceedings under this Act, no person shall be entitled to vote or to be counted as a member whose subscription at the time shall have been in arrear for a period exceeding three months.

16. The governing body of the society shall be the governors, council, directors, committee, trustees, or other body to whom, by the rules and regulations of the society, the management of its affairs is entrusted.

17. Any company or society established for a literary, scientific, or charitable purpose, and registered under Act XLIII. of 1850,* or any such society established and constituted previously to the passing of this Act, but not registered under the said Act XLIII. of 1850,* may, at any time hereafter, be registered as a society under this Act, subject to the proviso that no such company or society shall be registered under this Act unless an assent to its being so registered has been given by three-fifths of the members present, personally or by proxy, at some general meeting convened for the purpose by the governing body.

* Repealed by the Indian Companies Act (X. of 1866), s 219

(2) If any Collector acting under section 37, section 40, or section 41, feels doubt as to the amount of duty with which any instrument is chargeable, he may draw up a statement of the case, and refer it with his own opinion thereon for the decision of the Chief Controlling Revenue-authority.

(3) Such authority shall consider the case, and send a copy of its decision to the Collector, *who* shall proceed to assess and charge the duty (if any) in conformity with such decision.

In s. 56 (2), the italicized figures, 31, 40, and 41, have been substituted for the figures, "30," "37," and "38," respectively; and, in cl. (3), the word "and" before the words, "Such authority," has been omitted; and the italicized word *who* substituted for the words "and he"

57. (1) The Chief Controlling Revenue-authority may state

Statement of case by Chief Controlling Revenue-authority to High Court or Chief Court.

any case referred to it under section 56, sub-section (2) or otherwise coming to its notice, and refer such case, with its own opinion thereon—

(a) if the case arises in the territories for the time being administered by the Governor of Fort St. George in Council or the Governor of Bombay in Council—to the High Court of Judicature at Madras or Bombay, as the case may be:

(b) if it arises in the North-Western Provinces or Oudh or in Ajmere—to the High Court of Judicature for the North-Western Provinces:

(c) if it arises in the territories for the time being administered by the Lieutenant-Governor of the Punjab or in British Baluchistan—to the Chief Court of the Punjab:

(d) if it arises in the Central Provinces—to the High Court of Judicature at Bombay:

"(1) if it arises in Burma—to the Chief Court of Lower Burma:"*

(e) if it arises in any other part of British India—to the High Court of Judicature at Fort William.

(2) Every such case shall be decided by not less than three Judges of the High Court or Chief Court to which it is referred.

* The sentence under quotation has been inserted by the Lower Burma Courts Act (VI. of 1900) Sch. I, Pt. I.

(3) References made under *sub-section (1)*, when made by a Court subordinate to a District Court, shall be made through the District Court, and, when made by any subordinate Revenue Court, shall be made through the Court immediately superior.

In s. 60, the italicized figures, 57 and 35 (wherever they occur), have been substituted for "46" and "34," respectively, while the italicized letter *a* in parenthesis is new.

In sub-s. (2), the word "and" before the words, "Such Court," has been omitted, while the italicized words are new.

In sub-s. (3), the italicized expression, *sub-section (1)*, has been substituted for the words "this section."

61. (1) When any Court, in the exercise of its civil or revenue jurisdiction, *or any Criminal Court in any proceeding under Chapter XII. or Chapter XXXVI. of the Code of Criminal Procedure, 1898,** makes any order admitting any instrument in evidence as duly stamped or as not requiring a stamp, or upon payment of duty and a penalty under section 35, the Court to which appeals lie from, or references are made by, such first-mentioned Court, may, of its own motion or on the application of the Collector, take such order into consideration.

(2) *If such Court, after such consideration,* is of opinion that such instrument should not have been admitted in evidence without the payment of duty and penalty under section 35, or without the payment of a higher duty and penalty than those paid, it may record a declaration to that effect, and determine the amount of duty with which such instrument is chargeable, and may require any person in whose possession or power such instrument then is to produce the same, and may impound the same when produced.

(3) When any declaration has been recorded under *sub-section (2)* the Court recording the same shall send a copy thereof to the Collector, and, where the instrument to which it relates has been impounded or is otherwise in the possession of such Court, shall also send him such instrument.

(4) The Collector may thereupon, notwithstanding anything contained in the order admitting such instrument in evidence, or in any certificate granted under section 42, or in section 43, prosecute any person for any offence against the Stamp-law which the Col-

* Act V. of 1898.

(4) the parties must not be related to each other in any degree of consanguinity or affinity which would, according to any law to which either of them is subject, render a marriage between them illegal.

1st Proviso.—No such law or custom, other than one relating to consanguinity or affinity, shall prevent them from marrying.

2nd Proviso.—No law or custom as to consanguinity shall prevent them from marrying unless a relationship can be traced between the parties through some common ancestor, who stands to each of them in a nearer relationship than that of great-great-grandfather or great-great-grandmother, or unless one of the parties is the lineal ancestor, or the brother or sister of some lineal ancestor, of the other.

3. The Local Government may appoint one or more Registrars under this Act, either by name or as holding any office for the time being, for any portion of the territory subject to its administration. The officer so appointed shall be called "Registrar of Marriages under Act III. of 1872," and is hereinafter referred to as the "Registrar." The portion of territory for which any such officer is appointed shall be deemed his district.

4. When a marriage is intended to be solemnized under this Act, one of the parties must give notice in writing to the Registrar before whom it is to be solemnized.

The Registrar to whom such notice is given must be the Registrar of a district within which one at least of the parties to the marriage has resided for fourteen days before such notice is given.

Such notice may be in the form given in the first schedule to this Act.

5. The Registrar shall file all such notices, and keep them with the records of his office, and shall also forthwith enter a true copy of every such notice in a book to be for that purpose furnished to him by the Government, to be called the "Marriage Notice Book under Act III. of 1872," and such book shall be open at all reasonable times, without fee, to all persons desirous of inspecting the same.

(c) voting or attempting to vote under any proxy not duly stamped,

shall for every such offence be *punishable* with fine which may extend to five hundred rupees:

Provided that, when any penalty has been paid in respect of any instrument under section 35, section 40, or section 61, the amount of such penalty shall be allowed in reduction of the fine (if any) subsequently imposed under this section in respect of the same instrument upon the person who paid such penalty.

(2) If a share-warrant is issued without being duly stamped, the company issuing the same, and also every person who, at the time when it is issued, is the managing director or secretary or other principal officer of the company, shall *be punishable with fine which may extend to five hundred rupees.*

In s. 62, the italicized word *punishable* has been substituted for *punished*; and the italicized figures 35, 40, and 61 in the proviso have been substituted for the figures "34," "37," and "50," respectively.

63. Any person required by section 13 to cancel an adhesive stamp, and failing to cancel such stamp in manner prescribed by that section, shall be *punishable* with fine which may extend to one hundred rupees.

Penalty for omission to comply with provisions of section 27.

64. Any person who, with intent to defraud the Government,—

(a) executes any instrument in which all the facts and circumstances required by section 27 to be set forth in such instrument are not fully and truly set forth, or,

(b) being employed or concerned in or about the preparation of any instrument, neglects or omits fully and truly to set forth therein all such facts and circumstances, or

(c) *does any other act calculated to deprive the Government of any duty or penalty under this Act,*

shall be *punishable* with fine which may extend to five thousand rupees.

In s. 64, the words, 'of any duty,' after the word "Government," have been omitted, the italicized word *or* at the end of cl. (b) has been added, cl. (c) has been newly inserted, the italicized word *punishable* being substituted for "punished" Throughout the penal clauses, *punishable* has been substituted for *punished*.

If the decision of such Court be that the marriage in question would contravene any or more of the conditions prescribed in clause (1), (2), (3), or (4) of section 2, the marriage shall not be solemnized.

9. Any Court in which any such suit as is referred to in section 7 is filed may, if it shall appear to it that the objection was not reasonable and *bona fide*, inflict a fine, not exceeding one thousand rupees, on the person objecting, and award it or any part of it to the parties to the intended marriage.

10. Before the marriage is solemnized, the parties and three witnesses shall, in the presence of the Registrar, sign a declaration in the form contained in the second schedule to this Act. If either party has not completed the age of twenty-one years, the declaration shall also be signed by his or her father or guardian, except in the case of a widow, and in every case it shall be countersigned by the Registrar.

11. The marriage shall be solemnized in the presence of the Registrar and of the three witnesses who signed the declaration. It may be solemnized in any form, provided that each party says to the other, in the presence and hearing of the Registrar and witnesses, "I [A] take thee [B] to be my lawful wife (or husband)."

12. The marriage may be celebrated either at the office of the Registrar or at such other place, within reasonable distance of the office of the Registrar, as the parties desire: Provided that the Local Government may prescribe the conditions under which such marriages may be solemnized at places other than the Registrar's office, and the additional fees to be paid thereupon.

13. When the marriage has been solemnized, the Registrar shall enter a certificate thereof in a book to be kept by him for that purpose, and to be called the "Marriage Certificate Book under Act III. of 1872" in the form given in the third schedule to this Act; and such certificate shall be signed by the parties to the marriage and the three witnesses.

quent to that on which such bill or note is actually drawn or made; or

(b) knowing that such bill or note has been so post-dated, endorses, transfers, presents for acceptance or payment, or accepts, pays, or receives payment of, such bill or note, or in any manner negotiates the same; or

(c) with the like intent, practises or is concerned in any act, for other devices to defraud contrivance, or device not specially provided for by this Act or any other law for the time being in force.

shall be *punishable* with fine which may extend to one thousand rupees.

In s. 68, the italicized words, *Any person who*, have been substituted for the word "Whoever," and the italicized word *or* at the end of both the cls. (a) and (b), has been substituted for the words, "and whoever."

Penalty for breach of rule relating to sale of stamps and for unauthorized sale.

69. (a) Any person appointed to sell stamps who disobeys any rule made under section 7,† and

(b) any person not so appointed who sells or offers for sale any stamp (*other than a one-anna "or half an anna" adhesive stamp*),

shall be *punishable* with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

In s. 69, the italicized figures 7,‡ have been substituted for "55," and the italicized words have been added.

70. (1) No prosecution in respect of any offence punishable Institution and conduct of under this Act or any Act *heretofore* repealed prosecutions. shall be instituted without the sanction of the Collector or such other officer as the Local Government generally, or the Collector specially, authorizes in that behalf.

(2) The Chief Controlling Revenue-authority, or any officer generally or specially authorized by it in this behalf, may say any such prosecution, or compound any such offence.

(3) *The amount of any such composition shall be recoverable in, the manner provided by section 48.*

In s. 70, sub-s. (1), the words, 'or the General Stamp Act, 1859,'† after the word "Act" first occurring, have been omitted, and the italicized

* These words have been inserted by Act V. of 1906, s. 3.

† Act XVIII. of 1869.

17. The Indian Divorce Act* shall apply to all marriages contracted under this Act, and any such marriage may be declared null or dissolved in the manner therein provided, and for the causes therein mentioned, or on the ground that it contravenes some one or more of the conditions prescribed in clause (1), (2), (3), or (4) of section 2 of this Act.

18. The issue of marriages solemnized under this Act shall, if they marry under this Act, be deemed to be subject to the law to which their fathers were subject as to the prohibition of marriages by reason of consanguinity and affinity, and the provisos to section 2 of this Act shall apply to them.

19. Nothing in this Act contained shall affect the validity of any marriage not solemnized under its provisions; nor shall this Act be deemed, directly or indirectly, to affect the validity of any mode of contracting marriage; but, if the validity of any such mode shall hereafter come into question before any Court, such question shall be decided as if this Act had not been passed.

Registry of marriages contracted before passing of Act.

20. [*Repealed by Act XII. of 1876.*]

21. Every person making, signing, or attesting any declaration or certificate prescribed by this Act, containing a statement which is false, and which he either knows or believes to be false, or does not believe to be true, shall be deemed guilty of the offence described in section 199 of the Indian Penal Code.

* Act IV. of 1869.

(b) the persons by whom alone such sale is to be conducted,
and

(c) the duties and remuneration of such persons :

*Provided that such rules shall not restrict the sale of one anna " or half an anna " * adhesive stamps.*

" Consistent herewith " after " rules " in line 3 omitted.

75. The Governor-General in Council may make rules to carry out generally the purposes of this Act, and may by such rules prescribe the fines, which shall in no case exceed five hundred rupees, to be incurred in breach thereof.

The words, " consistent herewith, " after the word " rules " in the first line, have been omitted, and the italicized portion has been added.

S 57 (para. 1) of the old Act has here been omitted. It was as follows —

" 57 Certain powers exercisable from time to time.—All powers to make appointments, rules, and orders conferred by this Act may be exercised from time to time as occasion requires. "

76. (1) All rules made under this Act, other than rules made under section 74, shall be published in the *Gazette of India*, and all rules made under section 74 shall be published in the local Gazette.

(2) All rules published as required by this section shall, upon such publication, have effect as if enacted by this Act.

In the first line of s. 76 (1), after the words, " other than rules, " the words, " consistent herewith, " have been omitted, and the italicized figures, 74, wherever they occur, have been substituted for " 55. "

In sub-s (2), the italicized words have been substituted for the words, " the force of law "

77. Nothing in this Act contained shall be deemed to affect the duties chargeable under any enactment † for the time being in force relating to court-fees.

The italicized words, *in this Act*, have been substituted for " herein. "

* These words have been inserted by Act V. of 1906, s. 3.

† Act VII. of 1870.

6. I am aware that, if any statement in this declaration is false, and if, in making such statement, I either know or believe it to be false, or do not believe it to be true, I am liable to imprisonment, and also to fine.

(Signed) *A B [the bridegroom]*

DECLARATION TO BE MADE BY THE BRIDE.

I, *C D*, hereby declare as follows.—

1. I am at the present time unmarried.
2. I do not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh, or Jaina religion
3. I have completed my age of fourteen years
4. I am not related to *A B [the bridegroom]* in any degree of consanguinity or affinity which would, according to the law to which I am subject, or to which the said *A B* is subject, and subject to the provisos of clause (4) of section 2 of Act III of 1872, render a marriage between us illegal.

[And when the bride has not completed her age of twenty-one years, unless she is a widow]

5. The consent of *M N*, my father [or guardian, as the case may be], has been given to a marriage between myself and *A B*, and has not been revoked.]

6. I am aware that, if any statement in this declaration is false, and if, in making such statement, I either know or believe it to be false, or do not believe it to be true, I am liable to imprisonment and also to fine.

(Signed) *C D [the bride]*.

Signed in our presence by the above-named *A B* and *C D*:

G H }
I J, } [three witnesses].
K L, }

[And when the bridegroom or bride has not completed the age of twenty-one years, except in the case of a widow]

Signed in my presence and with my consent by the above-named *A B* and *C D*:

M N, the father [or guardian] of
 the above-named *A B* [or *C D*, as the
 case may be]

(Countersigned) *E F*,

Registrar of Marriages under Act III. of 1872
 for the District of

Dated the

day of

18 .

SCHEDULE I.*

STAMP-DUTY ON INSTRUMENTS.

(See section 3)

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
1. ACKNOWLEDGMENT of a debt exceeding twenty rupees in amount or value, written or signed by, or on behalf of, a debtor in order to supply evidence of such debt in any book (other than a banker's pass-book) or on a separate piece of paper when such book or paper is left in the creditor's possession, <i>provided that such acknowledgment does not contain any promise to pay the debt or any stipulation to pay interest or to deliver any goods or other property</i>	One anna
1. ADMINISTRATION-BOND , including a bond given under section 256 of the Indian Succession Act, 1865 † section 6 of the Government Savings Bank Act, 1873, ‡ section 78 of the Probate and Administration Act, 1881, § or section 9 or section 10 of the Succession Certificate Act, 1889 ||—	
(a) <i>where the amount does not exceed Rs. 1,000</i>	The same duty as a bond (No. 15) for such amount.
(b) <i>in any other case</i> ...	Five rupees.

* All additions to, and modifications of, the Schedules, in the old Act (1879), are in italics.
 † Act X of 1865

‡ Act V. of 1873.
 § Act V. of 1881.
 || Act VII. of 1889

SCHEDULE 1.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
5. AGREEMENT OR MEMORANDUM OF AN AGREEMENT—	
<p>(a) if relating to the sale of a Government security, or share in an <i>incorporated</i> Company or <i>other body corporate</i> or a Bill of Exchange</p>	<p>One anna.</p>
<p>(b) if not otherwise provided for ...</p>	<p>Eight annas.</p>
<p><i>Exemptions.</i></p>	
<p>Agreement or memorandum of agreement—</p>	
<p>(a) for or relating to the sale of goods or merchandize exclusively, not being a NOTE or MEMORANDUM chargeable under No 43,</p>	
<p>(b) made in the form of tenders to the Government of India for or relating to any loan,</p>	
<p>(c) made under the European Vagrancy Act, 1874,* section 17</p>	
<p>AGREEMENT TO LEASE <i>See LEASE (No 35)</i></p>	

* Act IX. of 1874

SECTIONS.

20. Liquidation of damages not a bar to specific performance.

(b) *Contracts which cannot be specifically enforced.*

21. Contract not specifically enforceable.

(c) *Of the Discretion of the Court.*

22. Discretion as to decreeing specific performance

(d) *For whom Contracts may be specifically enforced.*

23. Who may obtain specific performance.

(e) *For whom Contracts cannot be specifically enforced.*

24. Personal bars to the relief.

25. Contracts to sell property by one who has no title, or who is a voluntary settler.

(f) *For whom Contracts cannot be specifically enforced, except with a variation.*

26. Non-enforcement, except with variation.

(g) *Against whom Contracts may be specifically enforced.*

27. Relief against parties and persons claiming under them by subsequent title.

(h) *Against whom Contracts cannot be specifically enforced.*

28. What parties cannot be compelled to perform

(i) *The effect of dismissing a Suit for Specific Performance.*

29. Bar of suit for breach after dismissal.

SECTIONS.

(j) *Awards and Directions to execute Settlements.*

30. Application of preceding sections to awards and testamentary directions to execute settlements.

CHAPTER III.

OF THE RECTIFICATION OF INSTRUMENTS.

31. When instrument may be rectified

32. Presumption as to intent of parties.

33. Principles of rectification.

34. Specific enforcement of rectified contract

CHAPTER IV.

OF THE RESCISSION OF CONTRACTS.

35. When rescission may be adjudged.

36. Rescission for mistake.

37. Alternative prayer for rescission in suit for specific performance.

38. Court may require party rescinding to do equity.

CHAPTER V.

OF THE CANCELLATION OF INSTRUMENTS.

39. When cancellation may be ordered

40. What instruments may be partially cancelled.

41. Power to require party for whom instrument is cancelled to make compensation.

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
8. APPRAISEMENT OR VALUATION made otherwise than under an order of the Court in the course of a suit—	
(a) <i>where the amount does not exceed Rs 1,000.</i>	The same duty as a <i>Bond</i> (No. 15) for such amount
(b) <i>in any other case</i>	<i>Five rupees</i>
<i>Exemptions.</i>	
(a) Appraisement or valuation made for the information of one party only, and not being in any manner obligatory between parties, either by agreement or operation of law.	
(b) Appraisement of crops for the purpose of ascertaining the amount to be given to a landlord as rent	
9. APPRENTICESHIP - D E E D including every writing relating to the service or tuition of any apprentice, clerk, or servant, placed with any master to learn any profession trade or employment, <i>not being</i> ARTICLES OF CLERKSHIP (No. 11)	
<i>Exemption.</i>	Five rupees.
Instruments of apprenticeship executed by a Magistrate under <i>the Apprentices Act, 1850,*</i> or by which a person is apprenticed by or at the charge of any public charity.	

* Act XIX of 1850 The former words were, "under Act XIX. of 1850" The "Apprentices Act, 1850," is the short title of Act XIX of 1850.—See the Indian Short Titles Act (XIV. of 1897).

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
12 AWARD , that is to say, any decision in writing by an arbitrator or umpire, <i>not being an award directing a partition</i> , on a reference made otherwise than by an order of the Court in the course of a suit—	
(a) where the amount or value of the property to which the award relates as set forth in such award does not exceed Rs 1,000,	The same duty as a Bond (No. 15) for such amount.
(b) in any other case ..	Five rupees.
<i>Exemption</i>	
Award under the Bombay District Municipal Act, 1873,* section 81, or the Bombay Hereditary Offices Act, 1874 † section 18	
13. BILL OF EXCHANGE [<i>as defined by s. 2 (2) & (3)</i>], not being a Bond, bank-note or currency-note—	
(a) where payable on demand ..	One anna

* Bom. Act VI of 1873

† Bom. Act III. of 1874.

Commencement.

And it shall come into force on the first day of May 1877.

2. [Repealed by Act XII. of 1891.]

Interpretation-clause.

3. In this Act, unless there be something repugnant in the subject or context,—

‘Obligation,’

‘obligation’ includes every duty enforceable by law :

‘trust,’

‘trust’ includes every species of express, implied or constructive fiduciary ownership :

trustee,

‘trustee’ includes every person holding, expressly, by implication, or constructively, a fiduciary character :

Illustrations.

(a) Z bequeaths land to A, not doubting that he will pay thereout an annuity of Rs. 1,000 to B for his life. A accepts the bequest. A is a trustee, within the meaning of this Act, for B, to the extent of the annuity.

(b) A is the legal, medical, or spiritual adviser of B. By availing himself of his situation as such adviser, A gains some pecuniary advantage which might otherwise have accrued to B. A is a trustee for B, within the meaning of this Act, of such advantage.

(c) A, being B's banker, discloses for his own purpose the state of B's account. A is a trustee, within the meaning of this Act, for B, of the benefit gained by him by means of such disclosure.

(d) A, the mortgagee of certain leaseholds, renews the lease in his own name. A is a trustee, within the meaning of this Act, of the renewed lease, for those interested in the original lease.

(e) A, one of several partners, is employed to purchase goods for the firm. A, unknown to his co-partners, supplies them, at the market-price, with goods previously bought by himself when the price was lower, and thus makes a considerable profit. A is a trustee for his co-partners, within the meaning of this Act, of the profit so made.

(f) A, the manager of B's indigo-factory, becomes agent for C, a vendor of indigo-seed, and receives, without B's assent, commission on the seed purchased from C for the factory. A is a trustee, within the meaning of this Act, for B, of the commission so received.

(g) A buys certain land with notice that B has already contracted to buy it. A is a trustee, within the meaning of this Act, for B, of the land so bought.

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
13. BILL OF EXCHANGE—<i>contd.</i> (c) <i>where payable at more than one year after date or sight ...</i>	The same duty as a Bond (No. 15) for the same amount.
14. BILL OF LADING (<i>including a through bill of lading</i>) ...	
<p><i>N.B.</i>—If a bill of lading is drawn in parts, the proper stamp therefor must be borne by each one of the set.</p> <p><i>Exemptions.</i></p> <p>(a) Bill of lading when the goods therein described are received at a place within the limits of any ports as defined under the Indian Ports Act, 1889,* and are to be delivered at another place within the limits of the same port.</p> <p>(b) Bill of lading when executed out of British India, and relating to property to be delivered in British India</p>	Four annas.
15. BOND [as defined by section 2 (3)] not being a DEBENTURE (No. 27) and not being otherwise provided for by this Act, or by the Courts Act, 1870†—	

* Act X. of 1889

† Act VII. of 1870.

Relief not granted to enforce penal law.

7. Specific relief cannot be granted for the mere purpose of enforcing a penal law.

PART II.—OF SPECIFIC RELIEF.

CHAPTER I.—OF RECOVERING POSSESSION OF PROPERTY.

(a.) *Possession of Immoveable Property.*

8. A person entitled to the possession of specific immoveable property may recover it in the manner prescribed by the Code of Civil Procedure.*

9. If any person is dispossessed without his consent of immoveable property otherwise than in due course of law, he or any person claiming through him may, by suit,† recover possession thereof, notwithstanding any other title that may be set up in such suit.

Nothing in this section shall bar any person from suing to establish his title to such property, and to recover possession thereof.

No suit under this section shall be brought against the Government.

No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.

(b.) *Possession of Moveable Property.*

10. A person entitled to the possession of specific moveable property may recover the same in the manner prescribed by the Code of Civil Procedure.*

Explanation 1.—A trustee may sue under this section for the possession of property to the beneficial interest in which the person for whom he is trustee is entitled.

* See Act XIV. of 1882, s. 3.

† Here certain words, repealed by Act XII. of 1891, have been omitted.

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
<p>15. BOND—<i>concl'd</i></p> <p><i>Exemptions</i></p> <p>Bond, when executed by—</p> <p>(a) headmen nominated under rules framed in accordance with the Bengal <i>Irrigation Act</i>, 1876,* section 99, for the due performance of their duties under that Act,</p> <p>(b) any person for the purpose of guaranteeing that the local income derived from private subscriptions to charitable dispensary or hospital or any other object of public utility shall not be less than a specified sum per mensem</p>	
<p>16. BOTTOMRY BOND, that is to say, any instrument whereby the master of a sea-going ship borrows money on the security of the ship to enable him to preserve the ship or prosecute her voyage.</p>	<p>The same duty as a Bond (No. 15) for the same amount.</p>
<p>17. CANCELLATION—INSTRUMENT OF (<i>including any instrument by which any instrument previously executed is cancelled</i>), <i>if attested and not otherwise provided for</i></p>	<p>Five rupees.</p>

* Ben. Act III. of 1876.

of clause *b*.—Z has got possession of an idol belonging to A's family, and of which A is the proper custodian. Z may be compelled to deliver the idol to A.

of clause *c*.—A is entitled to a picture by a dead painter and a pair of rare China vases. B has possession of them. The articles are of too special a character to bear an ascertainable market-value. B may be compelled to deliver them to A.

CHAPTER II.—OF THE SPECIFIC PERFORMANCE OF CONTRACTS.

(a.) *Contracts which may be specifically enforced.*

12. Except as otherwise provided in this chapter, the specific cases in which specific performance of any contract may, in the performance enforceable. discretion of the Court, be enforced—

- (a) when the act agreed to be done is in the performance, wholly or partly, of a trust;
- (b) when there exists no standard for ascertaining the actual damage caused by the non-performance of the act agreed to be done;
- (c) when the act agreed to be done is such that pecuniary compensation for its non-performance would not afford adequate relief; or
- (d) when it is probable that pecuniary compensation cannot be got for the non-performance of the act agreed to be done.

Explanation.—Unless and until the contrary is proved, the Court shall presume that the breach of a contract to transfer immoveable property cannot be adequately relieved by compensation in money, and that the breach of a contract to transfer moveable property can be thus relieved.

Illustrations.

of clause *a*.—A holds certain stock in trust for B. A wrongfully disposes of the stock. The law creates an obligation on A to restore the same quantity of stock to B, and B may enforce specific performance of this obligation *

* The first illustration is repealed by the Indian Trusts Act (II. of 1882) as to the territories respectively administered by the Governor of Madras, in Council, the Lieutenant-Governors of the North-Western Provinces and the Punjab, and the Chief Commissioners of Oudh, the Central Provinces, Coorg, and Assam. The said illustration will, when the said Act II. of 1882 is extended to other territories, be repealed in such territories.

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT	PROPER STAMP-DUTY.
<p>19. CERTIFICATE OR OTHER DOCUMENT—<i>contd.</i></p> <p><i>See also</i> LETTER OF ALLOTMENT OF SHARES (No. 36).</p>	
<p>20. CHARTER-PARTY, that is to say, any instrument (except an agreement for the hire of a tug-steamer) whereby a vessel or some specified principal part thereof is let for the specified purposes of the charterer, <i>whether it includes a penalty clause or not</i></p>	<p>One rupee.</p>
<p>21. CHEQUE [<i>as defined by section 2 (7)</i>]</p>	<p>One anna.</p>
<p>22. COMPOSITION-DEED, that is to say any instrument executed by a debtor whereby he conveys his property for the benefit of his creditors, or whereby payment of a composition or dividend on their debts is secured to the creditors, or whereby provision is made for the continuance of the debtor's business, under the supervision of inspectors, or under letters of license, for the benefit of his creditors</p>	<p>Ten rupees.</p>
<p>23. CONVEYANCE [<i>as defined by section 2 (10)</i>], not being a TRANSFER charged or exempted under No. 62—</p>	

14. Where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed bears only a small proportion to the whole in value, and admits of compensation in money, the Court may, at the suit of either party, direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency.

Illustrations.

(a) A contracts to sell to B a piece of land consisting of 100 bighas. It turns out that 98 bighas of the land belong to A, and the two remaining bighas to a stranger, who refuses to part with them. The two bighas are not necessary for the use or enjoyment of the 98 bighas, nor so important for such use or enjoyment that the loss of them may not be made good in money. A may be directed, at the suit of B, to convey to B the 98 bighas, and to make compensation to him for not conveying the two remaining bighas; or B may be directed, at the suit of A, to pay to A, on receiving the conveyance and possession of the land, the stipulated purchase-money, less a sum awarded as compensation for the deficiency.

(b.) In a contract for the sale and purchase of a house and lands for two lakhs of rupees, it is agreed that part of the furniture should be taken at a valuation. The Court may direct specific performance of the contract, notwithstanding the parties are unable to agree as to the valuation of the furniture, and may either have the furniture valued in the suit, and include it in the decree for specific performance, or may confine its decree to the house.

15. Where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed forms a considerable portion of the whole, or does not admit of compensation in money, he is not entitled to obtain a decree for specific performance. But the Court may, at the suit of the other party, direct the party in default to perform specifically so much of his part of the contract as he can perform, provided that the plaintiff relinquishes all claim to further performance, and all right to compensation, either for the deficiency, or for the loss or damage sustained by him through the default of the defendant.

Illustrations.

(a.) A contracts to sell to B a piece of land consisting of 100 bighas. It turns out that 50 bighas of the land belong to A, and the other 50 bighas to a stranger, who refuses to part with them. A cannot obtain a decree against B for the specific performance of the contract; but, if B is willing to pay the price agreed upon, and to take the 50 bighas which

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT	PROPER STAMP-DUTY
<p>24 COPY OR EXTRACT certified to be a true copy or extract, by or by order of any public officer, and not chargeable under the law* for the time being in force relating to court fees—</p> <p>(1) if the original was not chargeable with duty, or if the duty with which it was chargeable does not exceed one rupee</p> <p>(2) in any other case ..</p> <p><i>Exemptions</i></p> <p>(a) Copy of any paper which a public officer is expressly required by law to make or furnish for record in any public office or for any public purpose</p> <p>"(b)† Copy of, or extract from, any register relating to births, baptisms, namings, dedications marriages, deaths or burials."</p>	<p>Eight annas.</p> <p>One rupee.</p>
<p>25 COUNTERPART OR DUPLICATE of any instrument chargeable with duty, and in respect of which the proper duty has been paid—</p> <p>(a, if the duty with which the original instrument is chargeable does not exceed one rupee,</p> <p>(b) in any other case ...</p>	<p>The same duty as is payable on the original.</p> <p>One rupee.</p>

* Act VII of 1870

† This new clause (b) has been substituted for the original clauses (b) and (c) of the exemptions from Article No. 24, by Act V. of 1906, s 7 (1).

Act II., 1899—5.

(d) where the vendor or lessor sues for specific performance of the contract, and the suit is dismissed on the ground of his imperfect title, the defendant has a right to a return of his deposit (if any) with interest thereon, to his costs of the suit, and to a lien for such deposit, interest, and costs on the interest of the vendor or lessor in the property agreed to be sold or let.

19: Any person suing for the specific performance of a contract may also ask for compensation for its breach, either in addition to, or in substitution for, such performance.

Power to award compensation in certain cases.

If in any such suit the Court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant, and that the plaintiff is entitled to compensation for that breach, it shall award him compensation accordingly.

If in any such suit the Court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.

Compensation awarded under this section may be assessed in such manner as the Court may direct.

Explanation.—The circumstance that the contract has become incapable of specific performance does not preclude the Court from exercising the jurisdiction conferred by this section.

Illustration.

of the second paragraph —A contracts to sell a hundred maunds of rice to B. B brings a suit to compel A to perform the contract, or to pay compensation. The Court is of opinion that A has made a valid contract, and has broken it, without excuse, to the injury of B, but that specific performance is not the proper remedy. It shall award to B such compensation as it deems just.

of the third paragraph —A contracts with B to sell him a house for Rs 1,000, the price to be paid and the possession given on the 1st January 1877. A fails to perform his part of the contract, and B brings his suit for specific performance and compensation, which is decided in his favour on the 1st January 1878. The decree may, besides ordering specific performance, award to B compensation for any loss which he has sustained by A's refusal.

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY
<p>27 DEBENTURE—<i>contd</i></p> <p><i>See also</i> BOND (No 15), and SECTIONS 8 and 55.</p> <p>DECLARATION OF ANY TRUST — <i>See</i> TRUST (No 64)</p>	
<p>28 DELIVERY-ORDER IN RESPECT OF GOODS, that is to say, any instrument entitling any person therein named, or his assigns or the holder thereof, to the delivery of any goods lying in any dock or port, or in any ware-house in which goods are stored or deposited on rent or hire, or upon any wharf, such instrument being signed by or on behalf of the owner of such goods, upon the sale or transfer of the property therein, when such goods exceed in value twenty rupees</p>	<p>One anna.</p>
<p>DEPOSIT OF TITLE-DEEDS—"See AGREEMENT relating to DEPOSIT OF TITLE-DEEDS, PAWN or PLEDGE (No 6)"</p> <p>DISSOLUTION OF PARTNERSHIP—<i>See</i> PARTNERSHIP (No 46)</p>	
<p>29. DIVORCE—Instrument of, that is to say, any instrument by which any person effects the dissolution of his marriage</p>	<p>One rupee.</p>

* Substituted for the words and figure 'See Agreement by way of equitable mortgage (No 6),' by Act XV. of 1904, s 8 (2).

- (g) a contract the performance of which involves the performance of a continuous duty extending over a longer period than three years from its date;
- (h) a contract of which a material part of the subject-matter, supposed by both parties to exist, has, before it has been made, ceased to exist.

And, save as provided by the Code of Civil Procedure,* no contract to refer a controversy to arbitration shall be specifically enforced; but if any person who has made such a contract, and has refused to perform it, sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit.

Illustrations.

to a.—A contracts to sell, and B contracts to buy, a lakh of rupees in the four per cent. loan of the Government of India :

A contracts to sell, and B contracts to buy, 40 chests of indigo at Rs. 1,000 per chest :

In consideration of certain property having been transferred by A to B, B contracts to open a credit in A's favour to the extent of Rs. 10,000, and to honour A's drafts to that amount.

The above contracts cannot be specifically enforced, for, in the first and the second, both A and B, and in the third A, would be reimbursed by compensation in money.

to b.—A contracts to render personal service to B :

A contracts to employ B on personal service.

A, an author, contracts with B, a publisher, to complete a literary work.

B cannot enforce specific performance of these contracts.

A contracts to buy B's business at the amount of a valuation to be made by two valuers, one to be named by A and the other by B. A and B each name a valuer, but, before the valuation is made, A instructs his valuer not to proceed.

By a charter-party entered into in Calcutta between A, the owner of a ship, and B, the charterer, it is agreed that the ship shall proceed to Rangoon, and there load a cargo of rice, and thence proceed to London, freight to be paid, one-third on arrival at Rangoon, and two-thirds on delivery of the cargo in London :

A lets land to B, and B contracts to cultivate it in a particular manner for three years next after the date of the lease :

A and B contract that, in consideration of annual advances to be made by A, B will, for three years next, after the date of the contract, grow

* See Act XIV. of 1882, s. 3.

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
EXTRACT. — <i>See COPY (No. 24)</i>	
32 FURTHER CHARGE — <i>Instrument of, that is to say, any instrument, imposing a further charge on mortgaged property—</i>	
<i>(a) when the original mortgage is one of the description referred to in clause (a) of article No. 40 (that is, with possession),</i>	The same duty as a Conveyance (No. 23) for a consideration equal to the amount of the further charge secured by such instrument
<i>(b) when such mortgage is one of the description referred to in clause (b) of article No. 40 (that is, without possession)—</i>	
<i>(i) if, at the time of execution of the instrument of further charge, possession of the property is given, or agreed to be given, under such instrument,</i>	The same duty as a Conveyance (No. 23) for a consideration equal to the total amount of the charge (including the original mortgage and any further charge already made) less the duty already paid on such original mortgage and further charge.
<i>(ii) if possession is not so given.</i>	The same duty as a Bond (No. 15) for the amount of the further charge secured by such instrument

should, during the term, keep the whole railway in good repair. Specific performance of this contract must be refused to B.

to *k*.—A contracts to pay an annuity to B for the lives of C and D. It turns out that, at the date of the contract, C, though supposed by A and B to be alive, was dead. The contract cannot be specifically performed.

(c.) Of the Discretion of the Court.

22. The jurisdiction to decree specific performance is discretionary, and the Court is not bound to grant such relief, merely because it is lawful to do so; but the discretion of the Court is not arbitrary, but sound and reasonable, guided by judicial principles, and capable of correction by a Court of appeal.

The following are cases in which the Court may properly exercise a discretion not to decree specific performance.—

I. Where the circumstances under which the contract is made are such as to give the plaintiff an unfair advantage over the defendant, though there may be no fraud or misrepresentation on the plaintiff's part.

Illustrations.

(a) A, a tenant for life of certain property, assigns his interest therein to B. C contracts to buy, and B contracts to sell, that interest. Before the contract is completed, A receives a mortal injury, from the effects of which he dies the day after the contract is executed. If B and C were equally ignorant or equally aware of the fact, B is entitled to specific performance of the contract. If B knew the fact, and C did not, specific performance of the contract should be refused to B.

(b) A contracts to sell to B the interest of C in certain stock-in-trade. It is stipulated that the sale shall stand good, even though it should turn out that C's interest is worth nothing. In fact, the value of C's interest depends on the result of certain partnership-accounts, on which he is heavily in debt to his partners. This indebtedness is known to A, but not to B. Specific performance of the contract should be refused to A.

(c.) A contracts to sell, and B contracts to buy, certain land. To protect the land from floods, it is necessary for its owner to maintain an expensive embankment. B does not know of this circumstance, and A conceals it from him. Specific performance of the contract should be refused to A.

(d.) A's property is put up to auction. B requests C, A's attorney, to bid for him. C does this inadvertently and in good faith. The persons present, seeing the vendor's attorney bidding, think that he is a mere puffer, and cease to compete. The lot is knocked down to B at a low price. Specific performance of the contract should be refused to B.

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT	PROPER STAMP-DUTY.
35 Lease— <i>contd.</i>	
<p>(ii) <i>where the lease purports to be for a term of not less than one year, but not more than three years:</i></p>	<p>The same duty as a Bond (No. 15) for the <i>amount or value of the average annual rent reserved.</i></p>
<p>(iii) <i>where the lease purports to be for a term in excess of three years.</i></p>	<p>The same duty as a Conveyance (No. 23) for a consideration equal to the amount or value of the average annual rent reserved.</p>
<p>(iv) <i>where the lease does not purport to be for any definite term,</i></p>	<p>The same duty as a Conveyance (No. 25) for a consideration equal to the amount or value of the average annual rent which would be paid or delivered for the first ten years if the lease continued so long.</p>
<p>(v) <i>where the lease purports to be in perpetuity</i></p>	<p>The same duty as a Conveyance (No. 23) for a consideration equal to one fifth of the whole amount of rents which would be paid or delivered in respect of the first fifty years of the lease.</p>
<p>(b) <i>where the lease is granted for a fine or premium or for money advanced, and where no rent is reserved</i></p>	<p>The same duty as a Conveyance (No. 23) for a consideration equal to the amount or value of such fine or premium or advance as set forth in the lease</p>

Illustration.

A sells land to a railway-company, who contract to [execute] certain works for his convenience. The company take the land and use it for their railway. Specific performance of the contract to execute the works should be decreed in favour of A.

(d) For whom Contracts may be specifically enforced.

23. Except as otherwise provided by this chapter the specific performance of a contract may be obtained by—

(a) any party thereto;

(b) the representative in interest, or the principal, of any party thereto, provided that, where the learning, skill, solvency, or any personal quality of such party is a material ingredient in the contract, or where the contract provides that his interest shall not be assigned, his representative in interest or his principal shall not be entitled to specific performance of the contract, unless where his part thereof has already been performed;

(c) where the contract is a settlement on marriage, or a compromise of doubtful rights between members of the same family, any person beneficially entitled thereunder;

(d) where the contract has been entered into by a tenant for life in due exercise of a power, the remainder-man;

(e) a reversioner in possession, where the agreement is a covenant entered into with his predecessor in title, and the reversioner is entitled to the benefit of such a covenant;

(f) a reversioner in remainder, where the agreement is such a covenant, and the reversioner is entitled to the benefit thereof, and will sustain material injury by reason of its breach;

(g) when a public company has entered into a contract, and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation;

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
<p>35. LEASE—<i>concl.</i></p> <p>(b) leases of fisheries granted under the Burma Fisheries Act, 1875,* or the Upper Burma Land and Revenue Regulation, 1889†</p>	
<p>36. LETTER OF ALLOTMENT OF SHARES in any Company or proposed company, or in respect of any loan to be raised by any Company or proposed Company</p> <p><i>See also CERTIFICATE OR OTHER DOCUMENT (No. 19)</i></p>	<p>One anna,</p>
<p>37. LETTER OF CREDIT, that is to say, any instrument by which one person authorizes another to give credit to the person in whose favour it is drawn</p>	<p>One anna</p>
<p>LETTER OF GUARANTEE— <i>See AGREEMENT (No. 5).</i></p>	
<p>38. LETTER OF LICENSE, that is to say, any agreement between a debtor and his creditors that the latter shall, for a specified time, suspend their claims, and allow the debtor to carry on business at his own discretion</p>	<p>Ten rupees</p>

* Act VII. of 1875

† Reg II of 1889.

thereupon sues for, and obtains, compensation for the breach. A cannot obtain specific performance of the contract.

Contracts to sell property by one who has no title, or who is a voluntary settler.

25. A contract for the sale or letting of property, whether moveable or immoveable, cannot be specifically enforced in favour of a vendor or lessor—

- (a) who, knowing himself not to have any title to the property, has contracted to sell or let the same;
- (b) who though he entered into the contract, believing that he had a good title to the property, cannot, at the time fixed by the parties or by the Court for the completion of the sale or letting, give the purchaser or lessee a title free from reasonable doubt;
- (c) who, previous to entering into the contract, has made a settlement (though not founded on any valuable consideration) of the subject-matter of the contract.

Illustrations.

(a.) A, without C's authority, contracts to sell to B an estate which A knows to belong to C. A cannot enforce specific performance of this contract, even though C is willing to perform it.

(b.) A bequeaths his land to trustees, declaring that they may sell it with the consent in writing of B. B gives a general prospective assent in writing to any sale which the trustees may make. The trustees then enter into a contract with C to sell him the land. C refuses to carry out the contract. The trustees cannot specifically enforce this contract, as, in the absence of B's consent to the particular sale to C, the title which they can give C is, as the law stands, not free from reasonable doubt.

(c.) A, being in possession of certain land, contracts to sell it to Z. On enquiry it turns out that A claims the land as heir of B, who left the country several years before, and is generally believed to be dead but of whose death there is no sufficient proof. A cannot compel Z specifically to perform the contract.

(d.) A, out of natural love and affection, makes a settlement of certain property on his brothers and their issue, and afterwards enters into a contract to sell the property to a stranger. A cannot enforce specific performance of this contract so as to override the settlement, and thus prejudice the interests of the persons claiming under it.

(f.) For whom Contracts cannot be specifically enforced, except with a variation.

26. Where a plaintiff seeks specific performance of a con-

tract in writing, to which the defendant sets up a variation, the plaintiff cannot

Non-enforcement
with variation.

STAMP.

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
c. MORTGAGE-DEED—<i>contd.</i>	
<i>Explanation—A mortgagor who gives to the mortgagee a power-of-attorney to collect rents or a lease of the property mortgaged or part thereof is deemed to give possession within the meaning of this article.</i>	
(c) <i>when a collateral or auxiliary or additional or substituted security, or by way of further assurance for the above-mentioned purpose where the principal or primary security, is duly stamped—</i>	
<i>for every sum secured not exceeding Rs. 1,000</i>	<i>Eight annas</i>
<i>and for every Rs 1,000 or part thereof secured in excess of Rs 1 000 ..</i>	<i>Eight annas.</i>
<i>Exemptions.</i>	
(1) <i>Instruments, executed by persons taking advances under the Land Improvement Loans Act, 1883,* or the Agriculturists' Loans Act, 1884,† or by their sureties as security for the repayment of such advances.</i>	
(2) <i>Letters of hypothecation accompanying a bill of exchange</i>	

* Act XIX of 1883.

† Act XII. of 1884.

(e.) A contracts in writing to let a house to B, for a certain term, at the rent of Rs. 100 per month, putting it first into tenantable repair. The house turns out to be not worth repairing, so, with B's consent, A pulls it down, and erects a new house in its place, B contracting orally to pay rent at Rs. 120 per mensem. B then sues to enforce specific performance of the contract in writing. He cannot enforce it except with the variations made by the subsequent oral contract.

(g.) Against whom Contracts may be specifically enforced.

Relief against parties and persons claiming under them by subsequent title.

27. Except as otherwise provided by this chapter, specific performance of a contract may be enforced against—

- (a) either party thereto;
- (b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;
- (c) any person claiming under a title which, though prior to the contract, and known to the plaintiff, might have been displaced by the defendant;
- (d) when a public company has entered into a contract, and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation;
- (e) when the promoters of a public company have, before its incorporation, entered into a contract, the company: provided that the company has ratified and adopted the contract, and the contract is warranted by the terms of the incorporation.

Illustrations.

to clause b —A contracts to convey certain land to B by a particular day. A dies intestate before that day without having conveyed the land. B may compel A's heir or other representative in interest to perform the contract specifically.

A contracts to sell certain land to B for Rs 5,000. A afterwards conveys the land for Rs. 6,000 to C, who has notice of the original contract. B may enforce specific performance of the contract as against C.

A contracts to sell land to be for Rs. 5,000. B takes possession of the land. Afterwards A sells it to C for Rs 6,000. C makes no enquiry of B. relating to his interest in the land. B's possession is sufficient to affect C with notice of his interest, and he may enforce specific performance of the contract against C.

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
<p>41. MORTGAGE OF A CROP.— <i>contd.</i></p> <p>and for every Rs 100 or part thereof secured in excess of Rs. 100 ...</p>	<p>"Two annas" *</p>
<p>42 NOTARIAL ACT, that is to say, any instrument, endorsement, note, at- testation, certificate, or entry <i>not being</i> a PROTEST (No. 50) made or signed by a Notary Public in the execution of the duties of his office, or by any other per- son lawfully acting as a Notary Public ..</p> <p>See also PROTEST OF BILL OR NOTE (No 50)</p>	<p>One rupee</p>
<p>43 NOTE OR MEMORANDUM sent by a Broker or Agent to his principal intimating the pur- chase or sale on account of such principal of any goods, stock, or marketable security exceeding in value twenty rupees</p>	<p>One anna.</p>
<p>44 NOTE OF PROTEST BY THE MASTER OF A SHIP</p> <p>See also PROTEST BY THE MASTER OF A SHIP (No 51)</p>	<p>Eight annas.</p>
<p>ORDER FOR THE PAYMENT OF MONEY— See BILL OF EXCHANGE (No. 13).</p>	

* Substituted for "four annas" by s. 8 (5), Act XV. of 1904

A directs an auctioneer to sell certain land. A afterwards revokes the auctioneer's authority as to 20 bighas of this land, but the auctioneer inadvertently sells the whole to B, who has not notice of the revocation. B cannot enforce specific performance of the agreement.

(i.) The Effect of dismissing a Suit for Specific Performance.

29. The dismissal of a suit for specific performance of a contract or part thereof shall bar the plaintiff's right to sue for compensation for the breach of such contract or part, as the case may be.

(j.) Awards and Directions to execute Settlements.

Application of preceding sections to awards and testamentary directions to execute settlements.

30. The provisions of this chapter as to contract shall, *mutatis mutandis*, apply to awards and to directions in a will or codicil to execute a particular settlement.

CHAPTER III.

OF THE RECTIFICATION OF INSTRUMENTS.

31. When, through fraud or a mutual mistake of the parties, When instrument may be rectified. a contract, or other instrument in writing, does not truly express their intention, either party or his representative in interest may institute a suit to have the instrument rectified; and if the Court find it clearly proved that there has been fraud or mistake in framing the instrument, and ascertain the real intention of the parties in executing the same, the Court may, in its discretion, rectify the instrument so as to express that intention, so far as this can be done without prejudice to rights acquired by third persons in good faith and for value.

Illustrations.

(a.) A, intending to sell to B his house and one of three godowns adjacent to it, executes a conveyance prepared by B, in which, through B's fraud, all three godowns are included. Of the two godowns which were fraudulently included, B gives one to C, and lets the other to D for a rent, neither C nor D having any knowledge of the fraud. The conveyance may, as against B and C, be rectified so as to exclude from it the godown given to C; but it cannot be rectified so as to affect D's lease.

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
46 PARTNERSHIP— A—INSTRUMENT OF— (a) where the capital of the partnership does not exceed Rs 500 .. (b) in any other case .. A—DISSOLUTION OF .. "PAWN OR PLEDGE—See AGREEMENT RELATING TO DEPOSIT OF TITLE-DEEDS, PAWN OR PLEDGE (No 6)"	 <i>Two rupees eight annas</i> <i>Ten rupees.</i> <i>Five rupees.</i>
47. POLICY OF INSURANCE—	
	<div>If drawn singly</div> <div>If drawn in duplicate, for each part.</div>
A†—SEA-INSURANCE (see section 7)— (i) for or upon any voyage— (i) where the premium or consideration does not exceed the rate of two annas or one-eighth per centum of the amount insured by the policy,	<div>One anna.</div> <div>Half an anna.</div>

* This entry has been inserted by Act XV of 1904, s. 8 (d).

† In Article 47, divisions A and B have been substituted for the original by Act V of 1966, s. 7 (3).

(b) where the contract is unlawful for causes not apparent on its face, and the defendant is more to blame than the plaintiff;

(c) where a decree for specific performance of a contract of sale, or of a contract to take a lease, has been made, and the purchaser or lessee makes default in payment of the purchase-money or other sums, which the Court has ordered him to pay.

When the purchaser or lessee is in possession of the subject-matter, and the Court finds that such possession is wrongful, the Court may also order him to pay to the vendor or lessor the rents and profits (if any) received by him as such possessor.

In the same case, the Court may, by order in the suit in which the decree has been made and not complied with, rescind the contract either so far as regards the party in default, or altogether as the justice of the case may require.

Illustrations.

to a—A sells a field to B. There is a right of way over the field of which A has direct personal knowledge, but which he conceals from B. B is entitled to have the contract rescinded.

to b—A, an attorney, induces his client B, a Hindu widow, to transfer property to him for the purpose of defrauding B's creditors. Here the parties are not equally in fault, and B is entitled to have the instrument of transfer rescinded.

36.* Rescission of a contract in writing cannot be adjudged for mere mistake, unless the party against whom it is adjudged can be restored to substantially the same position as if the contract had not been made.

37. A plaintiff instituting a suit for the specific performance of a contract in writing may pray in the alternative that, if the contract cannot be specifically enforced, it may be rescinded and delivered up to be cancelled; and the Court, if it refuses to enforce the contract specifically, may direct it to be rescinded and delivered up accordingly.

* In ss. 35 and 36 the words "in writing" have been repealed by the Transfer of Property Act (IV. of 1882) in territories in which this Act is in force.—See Act IV. of 1882, ss. 1 and 2.

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT	PROPER STAMP-DUTY.
47. POLICY OF INSURANCE— <i>cond</i>	
C.—ACCIDENT and Sickness Insurance—	
(a) against railway accident valid for a single journey only ..	One anna.
<i>Exemption.</i>	
<i>When issued to a passenger travel- ling by the intermediate or the third class in any rail- way</i>	
(b) in any other case—for the maxi- mum amount which may be- come payable in the case of any single accident or sick- ness where such amount does not exceed Rs. 1,000, and also where such amount ex- ceeds Rs. 1,000 for every Rs. 1,000 or part thereof ...	Two annas.
D.—LIFE-INSURANCE OR OTHER INSUR- ANCE NOT SPECIFICALLY PRO- VIDED FOR, except such a RE-INSURANCE as is describ- ed in Division E of this arti- cle—	
<i>for every sum insured not exceeding Rs 1,000, and also for every Rs 1,000 or part thereof in- sured in excess of Rs. 1,000—</i>	
(1) if drawn singly ...	Six annas.

40. Where an instrument is evidence of different rights or different obligations, the Court may, in a proper case, cancel it in part, and allow it to stand for the residue.

What instruments may be partially cancelled.

Illustration.

A draws a bill on B, who endorses it to C, by whom it appears to be endorsed to D, who endorses it to E. C's endorsement is forged. C is entitled to have such endorsement cancelled, leaving the bill to stand in other respects.

41. On adjudging the cancellation of an instrument, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

Power to require party for whom instrument is cancelled to make compensation.

CHAPTER VI.*

OF DECLARATORY DECREES.

42. Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may, in its discretion, make therein a declaration that he is so entitled, and the plaintiff need not, in such suit, ask for any further relief;

Discretion of Court as to declarations of status or right.

Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Bar to such declaration.

Explanation.—A trustee of property is a person interested to deny a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee.

Illustrations.

(a.) A is lawfully in possession of certain land. The inhabitants of a neighbouring village claim a right of way across the land. A may sue for a declaration that they are not entitled to the right so claimed.

* As to the Punjab, see also Act XVII. of 1887, s. 45.

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT	PROPER STAMP-DUTY.
8. POWER-OF-ATTORNEY [<i>as defined by s 2 (21)</i>], not being a Proxy (No 52)—	
(a) when executed for the sole purpose of procuring the registration of <i>one or more documents</i> in relation to a single transaction or for admitting execution of <i>one or more such documents</i>	Eight annas
(b) when required in suits or proceedings under the <i>Presidency Small Cause Courts Act, 1882*</i>	Eight annas
(c) when authorizing one person or more to act in a single transaction other than <i>the case mentioned in clause (a)</i> ...	One rupee
(d) when authorizing not more than five persons to act jointly and severally in more than one transaction or generally ..	Five rupees
(e) when authorizing more than five, but not more than ten, persons to act jointly and severally in more than one transaction or generally	Ten rupees.

* Act XV of 1882.

CHAPTER VII.

OF THE APPOINTMENT OF RECEIVERS.

44. The appointment of a receiver pending a suit is a matter resting in the discretion of the Court.

The mode and effect of his appointment, and his rights, powers, duties, and liabilities, are regulated by the Code of Civil Procedure.

CHAPTER VIII.

OF THE ENFORCEMENT OF PUBLIC DUTIES.

45. Any of the High Courts of Judicature at Fort William, Madras, and Bombay; may make an order requiring any specific act to be done or forbore, within the local limits of its ordinary original civil jurisdiction, by any person holding a public office, whether of a permanent or a temporary nature, or by any corporation or inferior Court of Judicature. provided—

- (a) that an application for such order be made by some person whose property, franchise, or personal right, would be injured by the forbearing or doing (as the case may be) of the said specific act ;
- (b) that such doing or forbearing is, under any law for the time being in force, clearly incumbent on such person or Court in his or its public character, or on such corporation in its corporate character ;
- (c) that in the opinion of the High Court such doing or forbearing is consonant to right and justice ;
- (d) that the applicant has no other specific and adequate legal remedy ; and
- (e) that the remedy given by the order applied for will be complete.

Exemptions from such power.

Nothing in this section shall be deemed to authorize any High Court—

* This reference should now be read as applying to Act XIV. of 1882.
—See s. 3 of that Act.

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
<p>51. PROTEST BY THE MASTER OF A SHIP that is to say, any declaration of the particulars of her voyage drawn up by him with a view to the adjustment of losses or the calculation of averages, and every declaration in writing made by him against the charterers or the consignees for not loading or unloading the ship, when such declaration is attested or certified by a Notary Public or other person lawfully acting as such ...</p> <p><i>See also NOTE OF PROTEST BY THE MASTER OF A SHIP (No 44).</i></p>	<p>One Rupee</p>
<p>52. PROXY empowering any person to vote at any one election of the Members of a District or Local Board, or of a body of Municipal Commissioners, or at any one meeting of (a) Members of an incorporated Company or other body corporate whose stock or funds is or are divided into shares and transferable, (b) a Local Authority, or (c) Proprietors, Members, or Contributors to the funds of any Institution ...</p>	<p>One anna.</p>
<p>53. RECEIPT [as defined by s. 2 (23)] for any money or other property the amount or value of which exceeds twenty rupees</p>	<p>One anna.</p>

51. Each of the said High Court shall, as soon as conveniently may be, frame rules to regulate the procedure under this chapter; and, until such rules are framed, the practice of such Court as to applications for and grants of writs of *mandamus* shall apply, so far as may be practicable, to applications and orders under this chapter.

PART III.

OF PREVENTIVE RELIEF.

CHAPTER IX.

OF INJUNCTIONS GENERALLY.

Preventive relief how granted.

52. Preventive relief is granted at the discretion of the Court by injunction, temporary or perpetual.

53. Temporary injunctions are such as are to continue until a specified time, or until the further order of the Court. They may be granted at any period of a suit, and are regulated by the Code of Civil Procedure.*

A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit: the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.

CHAPTER X.

OF PERPETUAL INJUNCTION.

54. Subject to the other provisions contained in, or referred to by, this chapter, a perpetual injunction may be granted to prevent the breach of an obligation existing in favour of the applicant, whether expressly or by implication.

* See Act XIV. of 1881, ss. 492-497.

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
<p>53 RECEIPT—<i>contd.</i></p> <p><i>Exemptions—contd.</i></p> <p>(e) given by holders of family-certificates in cases where the person from whose pay or allowances the sum comprised in the receipt has been assigned is a non-commissioned officer or soldier of either of the said Armies, and serving in such capacity;</p> <p>(f) for pensions or allowances by persons receiving such pensions or allowances in respect of their service as such non-commissioned officers or soldiers, and not serving the Government in any other capacity,</p> <p>(g) given by a headman or lambar-dar for land-revenue or taxes collected by him,</p> <p>(h) given for money or securities for money deposited in the hands of any banker, to be accounted for;</p> <p>Provided <i>that</i> the same is not expressed to be received of, or by the hands of, any other than the person to whom the same is to be accounted for:</p>	

the estate to C. B or any of his children may sue for an injunction to restrain the sale.

(4.) In the course of A's employment as a vakil, certain papers belonging to his client, B, come into his possession. A threatens to make these papers public, or to communicate their contents to a stranger. B may sue for an injunction to restrain A from so doing.

(5.) A is B's medical adviser. He demands money of B, which B declines to pay. A then threatens to make known the effect of B's communications to him as a patient. This is contrary to A's duty, and B may sue for an injunction to restrain him from so doing.

(6.) A, the owner of two adjoining houses, lets one to B, and afterwards lets the other to C. A and C begin to make such alterations in the house let to C as will prevent the comfortable enjoyment of the house let to B. B may sue for an injunction to restrain them from so doing.

(7.) A lets certain arable lands to B for purposes of husbandry, but without any express contract as to the mode of cultivation. Contrary to the mode of cultivation customary in the district, B threatens to show the lands with seed injurious thereto, and requiring many years to eradicate. A may sue for an injunction to restrain B from sowing the lands in contravention of his implied contract to use them in a husbandlike manner.

(8.) A, B, and C, are partners, the partnership being determinable at will. A threatens to do an act tending to the destruction of the partnership property. B and C may, without seeking dissolution of the partnership, sue for an injunction to restrain A from doing the act.

(9.) A, a Hindu widow in possession of her deceased husband's property, commits destruction of the property without any cause sufficient to justify her in so doing. The heir-expectant may sue for an injunction to restrain her.

(10.) A, B, and C, are members of an undivided Hindu family. A cuts timber growing on the family-property, and threatens to destroy part of the family-house, and to sell some of the family-utensils. B and C may sue for an injunction to restrain him.

(11.) A, the owner of certain houses in Calcutta, becomes insolvent. B buys them from the official assignee, and enters into possession. A persists in trespassing on and damaging the houses, and B is thereby compelled, at considerable expense, to employ men to protect the possession. B may sue for an injunction to restrain further acts of trespass.

(12.) The inhabitants of a village claim a right of way over A's land. In a suit against several of them, A obtains a declaratory decree that his land is subject to no such right. Afterward, each of the other villagers sues A for obstructing his alleged right of way over the land. A may sue for an injunction to restrain them.

(13.) A in an administration-suit, to which a creditor, B, is not a party, obtains a decree for the administration of C's assets. B proceeds against C's estate for his debt. A may sue for an injunction to restrain B.

(14.) A and B are in possession of contiguous lands and of the mines underneath them. A works his mine so as to extend under B's mine, and

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
55. RELEASE—<i>contd.</i>	
(a) if the amount or value of the claim does not exceed Rs 1,000.	The same duty as a Bond (No. 15) for such amount or value as set forth in the Release.
(b) in any other case	Five rupees.
56. RESPONDENTIA BOND , that is to say, any instrument securing a loan on the cargo laden or to be laden on board a ship, and making repayment contingent on the arrival of the cargo at the port of destination.	The same duty as a Bond (No. 15) for the amount of the loan secured.
57. REVOCATION OF ANY TRUST OR SETTLEMENT—<i>See SETTLEMENT (No. 53), TRUST (No 64)</i>	
57. SECURITY BOND OR MORTGAGE-DEED executed by way of security for the due execution of an office, or to account for money or other property received by virtue thereof, or executed by a surety to secure the due performance of a contract—	
(a) when the amount secured does not exceed Rs 1,000	The same duty as a Bond (No. 15) for the amount secured.
(b) in any other case	Five rupees.

(b.) A builds a house with eaves projecting over B's land. B may sue for an injunction to pull down so much of the eaves as so project.

(c.) In the case put as illustration *i* to section 54, the Court may also order all written communications made by B, as patient, to A, as medical adviser, to be destroyed.

(d.) In the case put as illustration *y* to s. 54, the Court may, also order A's letters to be destroyed.

(e.) A threatens to publish statements concerning B, which would be punishable under Chapter XXI. of the Indian Penal Code. The Court may grant an injunction to restrain the publication, even though it may be shown not to be injurious to B's property.

(f.) A, being B's medical adviser, threatens to publish B's written communications with him, showing that B has led an immoral life. B may obtain an injunction to restrain the publication

(g.) In the cases put as illustrations *v* and *w* to section 54 and as illustrations *e* and *f* to this section, the Court may also order the copies produced by piracy, and the trade-marks, statements, and communications therein respectively mentioned, to be given up or destroyed.

56. An injunction cannot be granted—

Injunction when refused.

(a) to stay a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings ;

(b) to stay proceeding in a Court not subordinate to that from which the injunction is sought ;

(c) to restrain persons from applying to any legislative body ;

(d) to interfere with the public duties of any department of the Government of India or the Local Government, or with the sovereign acts of a Foreign Government ;

(e) to stay proceedings in any criminal matter ;

(f) to prevent the breach of a contract, the performance of which would not be specifically enforced ,

(g) to prevent, on ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance ;

(h) to prevent a continuing breach in which the applicant has acquiesced ,

(i) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding, except in case of breach of trust

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
7. SECURITY BOND OR MORTGAGE-DEED—<i>concl'd.</i>	
<i>Exemptions—contd.</i>	
<p>(e) executed by officers of Government or their sureties to secure the due execution of an office or the due accounting for money or other property received by virtue thereof.</p>	
8. SETTLEMENT—	
<p>A.—INSTRUMENT OF (<i>including a deed of dower</i>).</p>	<p>The same duty as a Bond (No. 15) for a sum equal to the amount or value of the property settled as set forth in such Settlement :</p> <p><i>Provided that, where an agreement to settle is stamped with the stamp required for an instrument of settlement, and an instrument of settlement in pursuance of such agreement is subsequently executed, the duty on such instrument shall not exceed eight annas.</i></p>
<p><i>Exemptions.</i></p>	
<p>(a) <i>Deed of Dower executed on the occasion of a marriage between Muhammadans.</i></p>	
<p>(b) <i>Hlodansa, that is to say, any settlement of immoveable property executed by a Buddhist in Burma for a religious purpose in which no value has been specified, and on which a duty of Rs. 10 has been paid.</i></p>	

the contract to sing, but he is entitled to an injunction restraining A from singing at any other place of public entertainment

(d) B contracts with A that he will serve him faithfully for twelve months as a clerk. A is not entitled to a decree for specific performance of this contract. But he is entitled to an injunction restraining B from serving a rival house as clerk

(e) A contracts with B that, in consideration of Rs 1000 to be paid to him by B on a day fixed, he will not set up a certain business within a specified distance. B fails to pay the money. A cannot be restrained from carrying on the business within the specified distance

SCHEDULE.—(*See section 2*)

ENACTMENTS REPEALED.

[*Repealed by Act XII. of 1891.*]

DESCRIPTION OF INSTRUMENT.	PROPER STAMP DUTY.
SHIPPING-ORDER for or relating to the conveyance of goods on board of any vessel.	One anna.
SURRENDER OF LEASE—	
(a) when the duty with which the lease is chargeable does not exceed five rupees.	The duty with which such lease is chargeable.
(b) in any other case	Five rupees
<i>Exemption.</i>	
Surrender of lease, when such lease is exempted from duty.	
TRANSFER—	
(a) Of shares in an incorporated Company or other body corporate.	One-quarter of the duty payable on a Conveyance (No. 23) for a consideration equal to the value of the share.
(b) of debentures being marketable securities, whether the debenture is liable to duty or not, except debentures provided for by section 8.	One-quarter of the duty payable on a Conveyance (No. 23) for a consideration equal to the face amount of the Debentures.
(c) of any interest secured by a Bond, Mortgage-deed, or Policy of Insurance—	
(i) if the duty on such Bond, Mortgage-deed, or Policy does not exceed five rupees.	The duty with which such Bond, Mortgage-deed, or Policy of Insurance is chargeable.
(ii) In any other case	Five rupees.
(d) of any property under the Administrator-General's Act, 1874,* section 31	Ten Rupees.
* Act III of 1874.	

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28. Direction as to duty in case of certain conveyances.

E—Duty by whom payable.

29. Duties by whom payable.
30. Obligation to give receipt in certain cases

CHAPTER III.

ADJUDICATION AS TO STAMPS.

31. Adjudication as to proper stamp.
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CHAPTER IV.

INSTRUMENTS NOT DULY STAMPED.

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35. Instruments not duly stamped inadmissible in evidence, etc
Instruments admissible on payment of duty and penalty, and in certain criminal proceedings, and when executed by or on behalf of Government.
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39. Collector's power to refund penalty paid under section 38, sub-section (1).
40. Collector's power to stamp instruments impounded.

SECTIONS.

41. Instruments unduly stamped by accident.
42. Endorsement of instruments on which duty has been paid under sections 35, 40, or 41
43. Prosecution for offence against Stamp law.
44. Persons paying duty or penalty may recover same in certain cases.
45. Power to Revenue-authority to refund penalty or excess duty in certain cases.
46. Non-liability for loss of instruments sent under section 38. Copy may be made of instruments so sent
47. Power of payer to stamp bills, promissory notes, and cheques received by him unstamped.
48. *Recovery of duties and penalties.*

CHAPTER V.

ALLOWANCES FOR STAMPS IN CERTAIN CASES

49. Allowance for spoiled stamps
50. *Application for relief under section 49 when to be made*
51. *Allowance in the case of printed forms no longer required by Corporations.*
52. Allowance for misused stamps
53. Allowance for spoiled or misused stamps how to be made
54. Allowance for stamps not required for use
55. *Allowance on renewal of certain debentures.*

CHAPTER VI

REFERENCE AND REVISION.

56. (1) Control of and statement of case to Chief Controlling Revenue-authority.

SCHEME I.—concluded.

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
TRUST—contd.	
1.—REVOCATION OF— of or concerning any property <i>when made</i> by any instrument other than a WILL.	The same duty as a Bond (No. 15) for a sum equal to the amount or value of the property concerned as set forth in the instrument, but not exceeding ten rupees.
<i>See also SETTLEMENT (No. 58)</i>	
EVALUATION—See APPRAISEMENT (No. 8).	
WAKIL—See ENTRY AS A WAKIL (No. 30).	
5. WARRANT FOR GOODS, that is to say, any instrument evidencing the title of any person therein named, or his assigns, or the holder thereof, to the property in any goods lying in or upon any dock, warehouse, or wharf, such instrument being signed or certified by or on behalf of the person in whose custody such goods may be	Four annas.

ACT NO. II. OF 1899.

The Indian Stamp Act, 1899.

[As amended up to June 1907.]

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

Received the Governor-General's assent on the 27th January 1899.

An Act to consolidate and amend the Law relating to Stamps.

WHEREAS it is expedient to consolidate and amend the law relating to Stamps; It is hereby enacted as follows:—

The words in italics throughout this Act indicate additions and modifications.

CHAPTER I.

PRELIMINARY.

Short title, extent, and commencement.

1. (1) This Act may be called the Indian Stamp Act, 1899.

(2) It extends to the whole of British India *inclusive of Upper Burma, British Baluchistan, the Santal Parganas, and the Pargana of Spiti*; and

(3) It shall come into force on the first day of *July 1899*.

S. 2 of the old Act has been repealed.—See the General Clauses Act (X. of 1897), ss 6, 8, and 24. The repealed section (as partially repealed by Act XII of 1891) ran as follows —

"2 *Saving of things done under former Act.*—All rules made under the General Stamp Act, 1869, and then in force, shall, so far as they are consistent with this Act, be deemed to have been made hereunder. And all references made to the General Stamp Act, 1869, in enactments passed subsequently thereto, shall be deemed to be made to this Act.

Definitions.

2. In this Act, unless there is some thing repugnant in the subject or context—

(1) "Banker" includes a bank and any person acting as a banker:

ACT NO. X. OF 1865:

The Indian Succession Act, 1865.

ARRANGEMENT OF SECTIONS.

PART I.

PRELIMINARY.

SECTIONS.

1. Short title.
2. Act to constitute law of British India in cases of intestate or testamentary succession.
3. Interpretation-clause
4. Interests and powers not acquired nor lost by marriage.

PART II.

OF DOMICILE.

5. Law regulating succession to deceased person's immoveable and moveable property respectively
- 6 One domicile only affects succession to moveables.
7. Domicile of origin of person of legitimate birth.
8. Domicile of origin of illegitimate child
9. Continuance of domicile of origin.
10. Acquisition of new domicile.
11. Special mode of acquiring domicile in British India.
12. Domicile not acquired by residence as representative of foreign Government, or as part of his family.
13. Continuance of new domicile.
14. Minor's domicile.

SECTIONS.

15. Domicile acquired by woman on marriage.
16. Wife's domicile during marriage.
17. Minor's acquisition of new domicile.
18. Lunatic's acquisition of new domicile.
19. Succession to moveable property in British India in absence of proof of domicile elsewhere.

PART III.

OF CONSANGUINITY.

20. Kindred or consanguinity.
21. Lineal consanguinity.
22. Collateral consanguinity.
23. Persons held for purpose of succession to be similarly related to deceased
24. Mode of computing degrees of kindred.

PART IV.

OF INTESTACY.

25. As to what property deceased considered to have died intestate.
26. Devolution of such property.—
27. Where intestate has left widow and lineal descendants, or widow and kindred only, or widow and no kindred ;

In the above definition of "bond," the italicized word *includes* has been substituted for the word "means."

(6) "**Chargeable**" means, as applied to an instrument executed or first executed after *the commencement of this Act*, chargeable under this Act, and, as applied to any other instrument, chargeable under the law in force in British India when such instrument was executed or, where several persons executed the instrument at different times, first executed :

The words, "after *the commencement of this Act*," have been substituted for the words, "after this Act comes into force."

(7) "**Cheque**" means a bill of exchange drawn on a *specified* banker, and *not expressed to be payable otherwise than* on demand :

The italicized words in the above definition are new.

(8) "**Chief Controlling Revenue-authority**" means—

(a) in the Presidency of Fort St. George and the territories respectively under the administration of the Lieutenant-Governors of Bengal and the North-Western Provinces and the Chief Commissioner of Oudh—the Board of Revenue ;

(b) in the Presidency of Bombay, outside Sindh and the limits of the town of Bombay—a Revenue Commissioner ;

(c) in Sindh—the Commissioner ;

(d) in the Punjab and Burma including Upper Burma—the Financial Commissioner ; and

(e) elsewhere—the Local Government, or such officer as the Local Government may, by notification in the official Gazette, appoint in this behalf :

In cl. (d), the italicized words are new.

In cl. (e), after the words, "appoint in this behalf," the words "by name or in virtue of his office," have been omitted.

(9) "**Collector**"—

(a) means, within the limits of the towns of Calcutta, Madras, and Bombay, the Collector of Calcutta, Madras, and Bombay, respectively, and, without those limits, the Collector of a district, and

(b) includes a Deputy Commissioner and any officer whom the Local Government may, by notification in the official Gazette, appoint in this behalf :

PART X.

OF THE ATTESTATION, REVOCATION,
ALTERATION, AND REVIVAL OF
WILLS.

SECTIONS.

54. Effect of gift to attesting witness.
55. Witness not disqualified by interest or by being executor
56. Revocation of will by testator's marriage.
Power of appointment defined
57. Revocation of unprivileged will or codicil.
58. Effect of obliteration, interlineation, or alteration in unprivileged will
59. Revocation of privileged will or codicil.
60. Revival of unprivileged will.
Extent of revival of will or codicil partly revoked and afterwards wholly revoked.

PART XI

OF THE CONSTRUCTION OF WILLS.

61. Wording of will
62. Inquiries to determine questions as to object or subject of will
63. Misnomer or misdescription of object
64. When words may be supplied
65. Rejection of erroneous particulars in description of subject.
66. When part of description may not be rejected as erroneous
67. Extrinsic evidence admissible in case of latent ambiguity.
68. Extrinsic evidence inadmissible in cases of patent ambiguity or deficiency
69. Meaning of clause to be collected from entire will.
70. When words may be understood in restricted sense, and when in sense wider than usual.
71. Which of two possible constructions preferred.

SECTIONS.

72. No part rejected if it can be reasonably construed.
73. Interpretation of words repeated in different parts of will.
74. Testator's intention to be effectuated as far as possible
75. The last of two inconsistent clauses prevails.
76. Will or bequest void for uncertainty.
77. Words describing subject refer to property answering description at testator's death
78. Power of appointment executed by general bequest
79. Implied gift to objects of power in default of appointment.
80. Bequest to "heirs," &c., of particular person without qualifying terms
81. Bequest to "representatives," &c., of particular person.
82. Bequest without words of limitation.
83. Bequest in alternative.
84. Effect of words describing a class added to bequest to a person.
85. Bequest to class of persons under general description only.
86. Construction of terms.
87. Words expressing relationship denote only legitimate relatives, or, failing such relatives, reputed legitimate.
88. Rules of construction where will purports to make two bequests to same person
89. Constitution of residuary legatee.
90. Property to which residuary legatee entitled.
91. Time of vesting of legacy in general terms
92. In what case legacy lapses.
93. Legacy does not lapse if one of two joint legatees die before testator.
94. Effect of words showing testator's intention to give distinct shares.

- (c) any instrument by which tolls of any description are let ;
- (d) any writing on an application for a lease intended to signify that the application is granted :

(16A)* "Marketable security" means a security of such a description as to be capable of being sold in any stock market in British India or in the United Kingdom.

(17) "Mortgage-deed" includes every instrument whereby, for the purpose of securing money advanced, or to be advanced, by way of loan, or an existing or future debt, or the performance of an engagement, one person transfers or creates, to or in favour of another, a right over *or in respect of* specified property :

The italicized words, *or in respect of*, are new.

(18) "Paper" includes vellum, parchment, or any other material on which an instrument may be written :

(19) "Policy of insurance" *includes—*

- (a) any instrument by which one person, in consideration of a premium, engages to indemnify another against loss, damage, or liability arising from an unknown or contingent event ;
- (b) a life-policy, *and any policy insuring any person against accident or sickness, and any other personal insurance* †

In the above definition of "policy of insurance," the italicized word *includes* has been substituted for the word "means" In cl. (b) the italicized words are new

(20) "Policy of sea-insurance" or "*sea-policy*"—

- (a) means any insurance made upon any ship or vessel (*whether for marine or inland navigation*), or upon the machinery, tackle, or furniture of any ship or vessel, or upon any goods, merchandise, or property of any description whatever on board of any ship or vessel, or upon the freight of, or any other interest which may be lawfully insured in or relating to, any ship or vessel, and

* Clause 16A has been added by Act XV. of 1904, s. 2 (a).

† Here the word "*and*" and sub-clause (c) have been repealed by Act V. of 1906, s. 2.

SECTIONS.

124. Performance of condition, precedent or subsequent, within specified time.
Further time in case of fraud.

PART XVII.

OF BEQUESTS WITH DIRECTIONS AS TO APPLICATION OR ENJOYMENT.

125. Direction that fund be employed in particular manner following absolute bequest of same to or for benefit of any person.
126. Direction that mode of enjoyment of absolute bequest is to be restricted to secure specified benefit for legatee.
127. Bequest of fund for certain purposes some of which cannot be fulfilled.

PART XVIII.

OF BEQUESTS TO AN EXECUTOR.

128. Legatee named as executor cannot take unless he shows intention to act as executor.

PART XIX.

OF SPECIFIC LEGACIES.

129. Specific legacy defined,
130. Bequest of sum certain where stocks, &c, in which invested are described
131. Bequest of stock where testator had, at date of will, equal or greater amount of stock of same kind.
132. Bequest of money where not payable until part of testator's property disposed of in certain way.
133. When enumerated articles not deemed specifically bequeathed.
134. Retention, in form, of specific bequest to several persons in succession.

SECTIONS.

135. Sale and investment of proceeds of property bequeathed to two or more persons in succession.
136. Where deficiency of assets to pay legacies, specific legacy not to abate with general legacies

PART XX.

OF DEMONSTRATIVE LEGACIES.

137. Demonstrative legacy defined.
138. Order of payment when legacy directed to be paid out of fund the subject of specific legacy.

PART XXI.

OF ADEMPTION OF LEGACIES.

139. Ademption explained.
140. Non-ademption of demonstrative legacy.
141. Ademption of specific bequest of right to receive something from third party.
142. Ademption *pro tanto* by testator's receipt of part of entire thing specifically bequeathed.
143. Ademption *pro tanto* by testator's receipt of portion of entire fund, of which portion has been specifically bequeathed.
144. Order of payment where portion of fund specifically bequeathed to one legatee, and legacy charged on same fund to another, and, testator having received portion of that fund, remainder insufficient to pay both legacies.
145. Ademption where stock specifically bequeathed does not exist at testator's death
146. Ademption *pro tanto* where stock specifically bequeathed exists in part only at testator's death.

- (b) whereby any other moveable property is acknowledged to have been received in satisfaction of a debt, or
- (c) whereby any debt or demand, or any part of a debt or demand, is acknowledged to have been satisfied or discharged, or
- (d) which signifies or imports any such acknowledgment, *and* whether the same is or is not signed with the name of any person ; *and*

In the definition of "receipt," the italicized word *includes* has been substituted for the word "means" The definition of the word "schedule" has here been omitted.—See the General Clauses Act (X. of 1897), s. 3.

(24) "**Settlement**" means any non-testamentary disposition, in writing, of moveable or immoveable property, made—

- (a) in consideration of marriage,
- (b) for the purpose of distributing property of the settlor among his family or those for whom he desires to provide, or for the purpose of providing for some person dependent on him, or
- (c) for any religious or charitable purpose:

and includes an agreement in writing to make such a disposition; "and, where any such disposition has not been made in writing, any instrument recording, whether by way of declaration of trust or otherwise, the terms of any such disposition."³

The definitions of "vessel," and of "written" and "writing," have here been omitted —See the General Clauses Act (X. of 1897), s. 3.

The following section of the old Act has also been omitted [see the General Clauses Act (X. of 1897), s. 3 (48)].—

"4. *Schedules to be read as part of Act*—The schedules and everything therein contained should be read and construed as part of this Act."

CHAPTER II.

STAMP-DUTIES.

A.—Of the Liability of Instruments to Duty.

3. Subject to the *provisions of this Act and the exemptions* Instruments chargeable contained in Schedule I., the following with duty. instruments shall be chargeable with

* The words quoted have been added by Act XV. of 1904, s. 2, cl. (b).

SECTIONS.

172. Person taking in individual capacity under will may, in other character, elect to take in opposition
173. When acceptance of benefit given by will constitutes election to take under will.
174. Presumption arising from enjoyment by legatee for two years.
175. Confirmation of bequest by act of legatee
176. When testator's representatives may call upon legatee to elect. Effect of non-compliance
177. Postponement of election in case of disability.

PART XXVIII.

OF GIFTS IN CONTEMPLATION OF DEATH.

178. Property transferable by gift made in contemplation of death.
When gift said to be made in contemplation of death.
Such gift resumable.
When it fails.

PART XXIX.

OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.

179. Character and property of executor or administrator as such.
180. Administration with copy annexed of authenticated copy of will proved abroad
181. Probate only to appointed executor.
182. Appointment, express or implied.
183. Persons to whom probate cannot be granted.
184. Grant of probate to several executors simultaneously or at different times.
185. Separate probate of codicil discovered after grant of probate.

SECTIONS.

- Procedure when different executors appointed by codicil.
186. Accrual of representation to surviving executor.
187. Right as executor or legatee when established.
188. Effect of probate.
189. To whom administration may not be granted.
190. Right to intestate's property when established.
191. Effect of letters of administration.
192. Acts not validated by administration.
193. Grant of administration where executor has not renounced. Exception.
194. Form and effect of renunciation of executorship.
195. Procedure where executor renounces or fails to accept within time limited.
196. Grant of administration to universal or residuary legatee.
197. Right to administration of representative of deceased residuary legatee.
198. Grant of administration where no executor, nor residuary legatee, nor representative of such legatee.
199. Citation before grant of administration to legatee other than universal or residuary.
200. Order in which connections entitled to administer.
201. Administration to widow unless Court see cause to exclude her.
202. Association with widow in administration.
203. Administration where no widow or widow excluded. Proviso.
204. Title of kindred to administration.
205. Right of widower to administration of wife's estate.
206. Grant of administration to creditor.

(2) The parties may determine for themselves which of the instruments so employed shall, for the purposes of *sub-section (1)*, be deemed to be the principal instrument :

Provided that the duty chargeable on the instrument so determined shall be the highest duty which would be chargeable in respect of any of the said instruments employed.

In sub-s (2), the italicized words and figure, *sub-section (1)*, have been substituted for the words "this section."

5. Any instrument comprising or relating to several distinct Instruments relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under this Act.

6. Subject to the provisions of the *last preceding* section, an instrument so framed as to come within several descriptions in Schedule I. shall, where the duties chargeable thereunder are different, be chargeable only with the highest of such duties :

Provided that nothing in *this Act* contained shall render chargeable with duty exceeding one rupee a counterpart or duplicate of any instrument chargeable with duty and in respect of which the proper duty has been paid.

In s. 6, the italicised words, *last preceding*, have been substituted for the words, "first clause of this" (the first clause now being s. 5); the italicized words, *Provided that*, for "but"; and the italicized words, *in this Act*, for "herein."

7. (1) No contract for sea-insurance (other than such insurance as is referred to in section 506 of the Merchant Shipping Act, 1894*) shall be valid unless the same is expressed in a sea-policy.

(2) No *sea-policy* made for time shall be made for any time exceeding twelve months.

(3) No *sea-policy* shall be valid unless it specifies the particular risk or adventure, or the time for which it is made, the names of the subscribers or under-writers, and the amount or amounts insured.

* 57 & 58 Vict., c. 60.

SECTIONS.

PART XXXI.

OF THE PRACTICE IN GRANTING AND
REVOKING PROBATES AND LETTERS
OF ADMINISTRATION.

- 235. Jurisdiction of District Judge in granting and revoking probates, &c.
- 235A. Power to appoint Delegate or District Judge to deal with non-contentious cases
- 236. District Judge's powers as to grant of probate and administration.
- 237. District Judge may order person to produce testamentary papers
- 238. Proceedings of District Judge's Court in relation to probate and administration.
- 239. When and how District Judge to interfere for protection of property.
- 240. When probate or administration may be granted by District Judge
- 241. Disposal of application made to Judge of district in which deceased had no fixed abode.
- 241A. Probate and letters of administration may be granted by Delegate.
- 242. Conclusiveness of probate or letters of administration.
Effect of unlimited probates, &c., granted by High Court.
- 242A. Transmission to High Courts of certificate of grants under proviso to section 242
- 243. Conclusiveness of application for probate or administration if properly made and verified
- 244. Petition for probate.
- 245. In what cases translation of will to be annexed to petition
Verification of translation by person other than Court translator
- 246. Petition for letters of administration.

SECTIONS.

- 246A. Addition to statements in petition, etc., for probate or letters of administration in certain cases.
- 247. Petition for probate or administration to be signed and verified.
- 248. Verification of petition for probate by one witness to will.
- 249. Punishment for false averment in petition or declaration.
- 250. District Judge may examine petitioner in person, require further evidence, and issue citations to inspect proceedings.
Publication of citation.
- 251. Caveats against grant of probate or administration.
- 252. Form of caveat
- 253. After entry of caveat, no proceeding taken on petition until after notice to caveator.
- 253A. District Delegate when not to grant probate or administration.
- 253B. Power to transmit statement to District Judge in doubtful cases where no contention.
- 253C. Procedure where there is contention, or District Delegate thinks probate or letters of administration should be refused in his Court
- 254. Grant of probate to be under seal of Court
Form of such grant
- 255. Grant of letters of administration to be under seal of Court
Form of such grant.
- 256. Administration-bond.
- 257. Assignment of administration bond.
- 258. Time for grant of probate administration
- 259. Filing of original wills of probate or administration will annexed granted.
- 260. Grantee of probate or administration alone to sue, same revoke

In s. 8, the italicized word *securities*, wherever it occurs, has been substituted for the word "certificates."

In the proviso, the italicized words, *by the Governor-General in Council*, have been substituted for the words, "under this Act."

Cl.(3) is new.

Power to reduce, remit, or compound duties.

9. The Governor-General in Council may, by *rule or order* published in the *Gazette of India*,—

(a) reduce or remit, whether prospectively or retrospectively, in the whole or any part of British India, the duties with which any instruments or any particular class of instruments, or any of the instruments belonging to such class or any instruments, when executed by or in favour of any particular class of persons, or by or in favour of any members of such class, are chargeable, and

(b) *provide for the composition or consolidation of duties in the case of issues, by any incorporated company or other body corporate, of debentures, bonds, or other marketable securities.*

In s. 9, the italicized words, *rule or*, are new.

The old cl. (b) was as follows. "(b) cancel or vary such order to the extent of the powers hereby given."

B.—Of Stamps and the Mode of using them.

10. (1) Except as otherwise expressly provided in this Act,
 Duties how to be paid. all duties with which any instruments are chargeable shall be paid, and such payment shall be indicated on such instruments, by means of stamps—

(a) according to the provisions herein contained, or,

(b) when no such provision is applicable thereto—as the Governor-General in Council may by rule direct.

(2) The rules made under *sub-section (1)* may, among other matters, regulate—

(a) in the case of each kind of instrument—the description of stamps which may be used ;

(b) in the case of instruments stamped with impressed stamps—the number of stamps which may be used ;

SECTIONS

PART XXXV.

OF THE EXECUTOR'S ASSENT TO A LEGACY.

- 292. Assent necessary to complete legatee's title
- 293. Effect of executor's assent to specific legacy
Nature of assent.
- 294. Conditional assent.
- 295. Assent of executor to his own legacy
Implied assent
- 296. Effect of executor's assent.
- 297. Executor when to deliver legacies

PART XXXVI.

OF THE PAYMENT AND APPORTIONMENT OF ANNUITIES

- 298. Commencement of annuity when no time fixed by will.
- 299. When annuity, to be paid quarterly or monthly, first falls due
- 300. Dates of successive payments when first payment directed to be made within given time or on day certain.
Apportionment where annuitant dies between times of payment.

PART XXXVII.

OF THE INVESTMENT OF FUNDS TO PROVIDE FOR LEGACIES.

- 301. Investment of sum bequeathed where legacy, not specific, given for life.
- 302. Investment of general legacy to be paid at future time.
Intermediate interest.
- 303. Procedure when no fund charged with, or appropriated to, annuity.
- 304. Transfer to residuary legatee of contingent bequest.

SECTIONS.

- 305. Investment of residue bequeathed for life, without direction to invest in particular securities
- 306. Investment of residue bequeathed for life with direction to invest in specified securities.
- 307. Time and manner of conversion and investment
Interest payable until investment.
- 308. Procedure where minor entitled to immediate payment or possession of bequest, and no direction to pay to person on his behalf.

PART XXXVIII

OF THE PRODUCE AND INTEREST OF LEGACIES

- 309. Legatee's title to produce of specific legacy
- 310. Residuary legatee's title to produce of residuary fund.
- 311. Interest when no time fixed for payment of general legacy.
- 312. Interest when time fixed.
- 313. Rate of interest.
- 314. No interest on arrears of annuity within first year after testator's death.
- 315. Interest on sum to be invested to produce annuity.

PART XXXIX.

OF THE REFUNDING OF LEGACIES.

- 316. Refund of legacy paid under Judge's orders.
- 317. No refund if paid voluntarily.
- 318. Refund when legacy has become due on performance of condition within further time allowed under section 124.
- 319. When each legatee compellable to refund in proportion.

13. Every instrument written upon paper stamped with an impressed stamp shall be written in such manner that the stamp may appear on the face of the instrument, and cannot be used for or applied to any other instrument.

14. No second instrument chargeable with duty shall be written upon a piece of stamped paper upon which an instrument chargeable with duty has already been written :

Provided that nothing in this section shall prevent any endorsement which is duly stamped or is not chargeable with duty being made upon any instrument for the purpose of transferring any right created or evidenced thereby, or of acknowledging the receipt of any money or goods the payment or delivery of which is secured thereby.

15. Every instrument written in contravention of section 13 or section 14 shall be deemed to be unstamped.

In s. 15, the words and figures, "section 13 or section 14," have been substituted for the words and figures, "section 12 or 13."

16. Where the duty with which an instrument is chargeable, or its exemption from duty, depends in any manner upon the duty actually paid in respect of another instrument, the payment of such last-mentioned duty shall, if application is made in writing to the Collector for that purpose, and on production of both the instruments, be denoted upon such first-mentioned instrument *by endorsement under the hand of the Collector or in such other manner (if any) as the Governor-General in Council may by rule prescribe.*

In s. 16, the words italicized are new.

C.—Of the time of stamping Instruments.

17. All instruments chargeable with duty, and executed by any person in British India, shall be stamped before or at the time of execution.

18. (1) Every instrument chargeable with duty executed only out of British India, and not being a bill of exchange, cheque, or promissory note, may be stamped within three months after it has been first received in British India.

ACT NO. X. OF 1865:*

The Indian Succession Act, 1865.

RECEIVED THE G.-G.'S ASSENT ON THE 16TH MARCH 1865.

An Act to amend and define the Law of Intestate and Testamentary Succession in British India.

Preamble. WHEREAS it is expedient to amend and define the rules of law applicable to Intestate and Testamentary Succession in British India; It is enacted as follows:—

PART I.

PRELIMINARY.

Short title.

1. This Act may be cited as "The Indian Succession Act, 1865."

2. Except as provided by this Act, or by any other law for the time being in force, the rules herein contained shall constitute the law of British India applicable to all cases of intestate or testamentary succession.

Act to constitute law of British India in cases of intestate or testamentary succession

* Act X. of 1865 has been declared in force in—

- (1) the Santhal Parganas (*see* Reg. III. of 1872, s. 3, as amended by Reg. III of 1886),
 - (2) the Arakan Hill District, but not so as to affect Native Christians (*see* Reg. IX of 1874, s. 3)
 - (3) Upper Burma generally except the Shan States (*see* Act XX. of 1886, s. 6),
 - (4) British Baluchistan (*see* Reg. I of 1890, s. 3).
- The Act has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts.—
- The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singhbhum—*See Gazette of India*, Oct 22, 1881, Pt. I., p 504.
- The North-Western Provinces Tarai.—*See Gazette of India*, Sep. 23, 1876, Pt. I., p 505.

As to the application of portions of the Act to the wills of Hindus, Jains, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay, *see* the Hindu Wills Act (XXI. of 1870).

As to the exemption of Parsis from portions of the Act, *see* the Parsi Intestate Succession Act (XXI. of 1865). For further exemptions from the Act, *see* ss. 331, 332, *infra*.

† *See* 12 B. L. R 427

20. (1) Where an instrument is chargeable with *ad-valorem* duty in respect of any money expressed in any *currency other than that of British India*, such duty shall be calculated on the value of such money in the currency of British India according to the current rate of exchange on the day of the date of the instrument.

(2) *The Governor-General in Council may from time to time, by notification in the Gazette of India, prescribe a rate of exchange for the conversion of British or any foreign currency into the currency of British India for the purposes of calculating stamp-duty, and such rate shall be deemed to be the current rate for the purposes of sub-section (1).*

In s. 20 (1), the italicized words in lines 2 and 3 have been substituted for the words, "other foreign or colonial currency."

21. Where an instrument is chargeable with *ad-valorem* duty in respect of any stock or of any marketable or other security, such duty shall be calculated on the value of such stock or security according to the average price or the value thereof on the day of the date of the instrument.

In s. 21, the words *or other* and *or the value* are new.

22. Where an instrument contains a statement of current rate of exchange or average price, as the case may require, and is stamped in accordance with such statement, it shall, so far as regards the subject-matter of such statement, be presumed, until the contrary is proved, to be duly stamped.

23. Where interest is expressly made payable by the terms of an instrument, such instrument shall not be chargeable with duty higher than that with which it would have been chargeable had no mention of interest been made therein.

Certain instruments connected with mortgages of marketable securities to be chargeable as agreements.

23A.* (1) Where an instrument (not being a promissory note or bill of exchange)—

(a) is given upon the occasion of the deposit of any marketable security by way of security for money advanced

* S. 23A is added by Act XV. of 1904, s. 3.

"Will" means the legal declaration of the intentions of the testator with respect to his property, which he desires to be carried into effect after his death:

"Codicil" means an instrument made in relation to a will, and explaining, altering, or adding to its dispositions. It is considered as forming an additional part of the will:

"Probate" means the copy of a will certified under the seal of a Court of competent jurisdiction, with a grant of administration to the estate of the testator:

"Executor" means a person to whom the execution of the last will of a deceased person is, by the testator's appointment, confided:

"Administrator" means a person appointed by competent authority to administer the estate of a deceased person when there is no executor:

And in every part of British India to which this Act shall extend, "Local Government" shall mean the person authorized by law to administer executive government in such part; and

"High Court" shall mean the highest Civil Court of Appeal therein, and for the purposes of sections 242, 242A, 246A, and 277A, shall include the Court of the Recorder of Rangoon.

4 No person shall, by marriage, acquire any interest in the property of the person whom he or she marries, nor become incapable of doing

* The definition of "High Court" has been added by the Probates and Letters of Administration Act (XIII of 1875), s. 1; but the portion italicized has been repealed in Lower Burma by the Lower Burma Courts Act (VI. of 1900).

25. Where an instrument is executed to secure the payment of an annuity or other sum payable periodically, or where the consideration for a conveyance is an annuity or other sum payable periodically, the amount secured by such instrument or the consideration for such conveyance (as the case may be) shall, for the purposes of this Act, be deemed to be—

(a) where the sum is payable for a definite period so that the total amount to be paid can be previously ascertained—such total amount ;

(b) where the sum is payable in perpetuity, or for an indefinite time not terminable with any life in being at the date of such instrument or conveyance—the total amount which, according to the terms of such instrument or conveyance, will or may be payable during the period of twenty years *calculated from the date on which the first payment becomes due*, and

(c) where the sum is payable for an indefinite time terminable with any life in being at the date of such instrument or conveyance—the *maximum* amount which will or may be payable as aforesaid during the period of twelve years *calculated from the date on which the first payment becomes due*.

In cls. (b) and (c), the italicized words, *calculated from the date on which the first payment becomes due*, have been substituted for the words, "next after the date of such instrument or conveyance," while, in cl (c), the italicized word *maximum* has been substituted for the word "total."

26. Where the amount or value of the subject-matter of any instrument chargeable with *ad-valorem* Stamp duty cannot be, or (in the case of an instrument executed before *the commencement of this Act*) could not have been, ascertained, at the date of its execution or first execution, nothing shall be claimable under such instrument more than the highest amount or value for which, if stated in an instrument of the same description, the stamp actually used would, at the date of such execution, have been sufficient:

* "Provided that, in the case of the lease of a mine in which royalty or a share of the produce is received as the rent or part of

* This *Proviso* has been substituted for the original first proviso by Act XV. of 1904, s. 4.

Illustration.

At the time of the birth of A, his father was domiciled in England : A's domicile of origin is in England, whatever may be the country in which he was born

8. The domicile of origin of an illegitimate child is in the country in which, at the time of his birth, his mother was domiciled.

Continuance of domicile of origin

9. The domicile of origin prevails until a new domicile has been acquired.

10 A man acquires a new domicile by taking up his fixed habitation in a country which is not that of his domicile of origin.

Explanation—A man is not to be considered as having taken up his fixed habitation in British India merely by reason of his residing there in Her Majesty's civil or military service, or in the exercise of any profession or calling.

Illustrations.

(a) A, whose domicile of origin is in England, proceeds to British India, where he settles as a barrister or a merchant, intending to reside there during the remainder of his life. His domicile is now in British India.

(b) A, whose domicile is in England, goes to Austria, and enters the Austrian service, intending to remain in that service : A has acquired a domicile in Austria.

(c) A, whose domicile of origin is in France, comes to reside in British India under an engagement with the British Indian Government for a certain number of years. It is his intention to return to France at the end of that period. He does not acquire a domicile in British India.

(d) A, whose domicile is in England, goes to reside in British India for the purpose of winding up the affairs of a partnership which has been dissolved, and with the intention of returning to England as soon as that purpose is accomplished. He does not, by such residence, acquire a domicile in British India, however long the residence may last.

(e) A, having gone to reside in British India under the circumstances mentioned in the last preceding illustration, afterwards alters his intention, and takes up his fixed habitation in British India. A has acquired a domicile in British India.

(f) A, whose domicile is in the French Settlement of Chandernagore, is compelled by political events to take refuge in Calcutta, and resides in

(3) Where a person, having contracted for the purchase of any property, but not having obtained a conveyance thereof, contracts to sell the same to any other person, and the property is in consequence conveyed immediately to the sub-purchaser, the conveyance shall be chargeable with *ad-valorem* duty in respect of the consideration for the sale by the original purchaser to the sub-purchaser.

(4) Where a person having contracted for the purchase of any property, but not having obtained a conveyance thereof, contracts to sell the whole or any part thereof to any other person or persons, and the property is in consequence conveyed by the original seller to different persons in parts, the conveyance of each part sold to a sub-purchaser shall be chargeable with *ad-valorem* duty in respect only of the consideration paid by such sub-purchaser, without regard to the amount or value of the original consideration; and the conveyance of the residue (if any) of such property to the original purchaser shall be chargeable with *ad-valorem* duty in respect only of the excess of the original consideration over the aggregate of the considerations paid by the sub-purchasers:

Provided that the duty on such last-mentioned conveyance shall in no case be less than one rupee.

(5) Where a sub-purchaser takes an actual conveyance of the interest of the person immediately selling to him, which is chargeable with *ad-valorem* duty in respect of the consideration paid by him, and is duly stamped accordingly, any conveyance to be afterwards made to him of the same property by the original seller shall be chargeable with a duty equal to that which would be chargeable on a conveyance for the consideration obtained by such original seller, or, where such duty would exceed five rupees, with a duty of five rupees.

E.—Duty by whom payable.

29. In the absence of an agreement to the contrary, the expense of providing the proper stamp shall be borne—
 Duties by whom payable.

(a) in the case of any instrument described in *any of the following articles of Schedule I., namely:—*

No. 2. (Administration Bond).

Exception.—The wife's domicile no longer follows that of her husband if they be separated by the sentence of a competent Court, or if the husband is undergoing a sentence of transportation.

17. Except in the cases above provided for, a person cannot, during minority, acquire a new domicile.

18. An insane person cannot acquire a new domicile in any other way than by his domicile following the domicile of another person.

19. If a man dies leaving moveable property in British India, in the absence of proof of any domicile elsewhere, succession to the property is regulated by the law of British India.

PART III.*

OF CONSANGUINITY.

20. Kindred or consanguinity is the connexion or relation of persons descended from the same stock or common ancestor.

21. Lineal consanguinity is that which subsists between two persons, one of whom is descended in a direct line from the other, as between a man and his father, grandfather, and great-grandfather, and so upwards in the direct ascending line, or between a man, his son, grandson, great-grandson, and so downwards in the direct descending line.

Every generation constitutes a degree, either ascending or descending.

A man's father is related to him in the first degree, and so likewise is his son, his grandfather and grandson in the second degree; his great-grandfather and great-grandson in the third.

* Part III does not apply to Parsis—See the Parsi Intestate Succession Act (XXI. of 1865), s. 8.

- (d) in the case of a counterpart of a lease—by the lessor:
- (e) in the case of an instrument of exchange—by the parties in equal shares:
- (f) in the case of a certificate of sale—by the purchaser of the property to which such certificate relates; and
- (g) in the case of an instrument of partition—by the parties thereto in proportion to their respective shares in the *whole* property *partitioned*, or, when the partition is made in execution of an order passed by a Revenue authority, *or Civil Court, or arbitrator*, in such proportion as such authority, *Court, or arbitrator* directs.

In s. 29, cl (a) has been substituted for the original, which was as follows. "(a) in the case of any instrument described in numbers 2, 11, 13, 14, 15, 24, 28, 29, 30, 44, 53, 54, 55, 57, and 60 (a) and (b) of the first schedule by the person drawing, making, or executing such instrument "

In cl. (b), the italicized words have been substituted for "insured."

In cl. (c), the italicized words are new.

In cl. (g), the italicized word *whole* is new, and the italicized word *partitioned* has been substituted for *comprised therein*, and the remaining italicized words have been added.

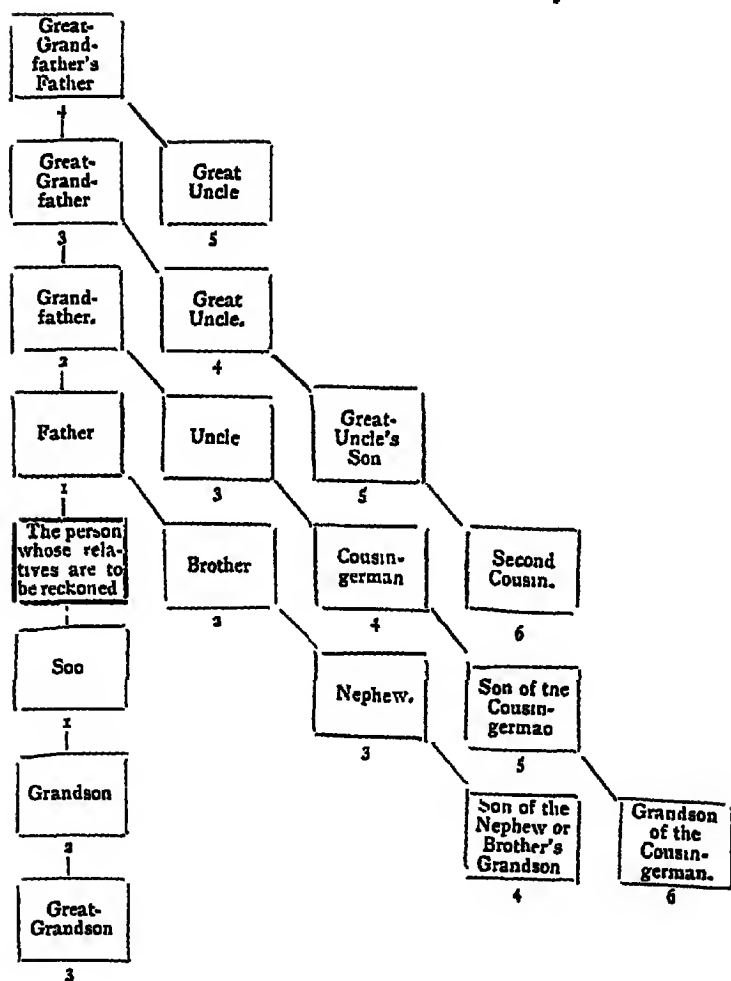
30. Any person receiving any money exceeding twenty rupees
 Obligation to give receipt in amount, or any bill of exchange,
 in certain cases. cheque, or promissory note for an amount
 exceeding twenty rupees, or receiving in satisfaction *or part satis-*
faction of a debt any moveable property exceeding twenty rupees in
 value, shall, on demand by the person paying or delivering such
 money, bill, cheque, note, or property, give a duly-stamped receipt
 for the same.

"Any person receiving or taking credit for any premium or consideration for any renewal of any contract of fire-insurance, shall, within one month after receiving or taking credit for such premium or consideration, give a duly stamped receipt for the same."*

In s 30, the italicized words, *or part-satisfaction*, are new.

* This para has been added by Act V. of 1906, s. 5.

TABLE OF CONSANGUINITY.



- (b) the duty determined by the Collector under section 31, or such a sum as, with the duty already paid in respect of the instrument, is equal to the duty so determined, has been paid,

the Collector shall certify by endorsement on such instrument that the full duty (stating the amount) with which it is chargeable has been paid.

- (2) When such instrument is, in his opinion, not chargeable with duty, the Collector shall certify in manner aforesaid that such instrument is not so chargeable.

- (3) Any instrument upon which an endorsement has been made under this section shall be deemed to be duly stamped, or not chargeable with duty, as the case may be; and, if chargeable with duty, shall be receivable in evidence or otherwise, and may be acted upon and registered as if it had been originally duly stamped;

Provided that nothing in this section shall authorize the Collector to endorse—

- (a) any instrument executed or first executed in British India and brought to him after the expiration of one month from the date of its execution or first execution, as the case may be;
- (b) any instrument executed or first executed out of British India, and brought to him after the expiration of three months after it has been first received in British India; or
- (c) any instrument chargeable with the duty of one anna, "or half an anna,"* or any bill of exchange or promissory note, when brought to him after the drawing or execution thereof on paper not duly stamped.

"In cl. (b) of s. 32 (1)," the italicized figures 31 have been substituted for the figures "30;" and the italicized words *provided that* in the proviso have been newly added.

It being unnecessary now, the old s. 32 has here been omitted. It ran as follows.—

"32. *Payment of fees under section 30 how made*—Every payment of a fee under section 30 shall be made in stamps or cash as the Governor-general in Council may by rule direct."

* These words have been inserted by Act V. of 1906, s. 3.

and the other half shall go to those who are of kindred to him in the order and according to the rules herein contained.

If he has left none who are of kindred to him, the whole of his property shall belong to his widow :

28. Where the intestate has left no widow, his property shall go to his lineal descendants or to those who are of kindred to him, not being lineal descendants, according to the rules herein contained ; and, if he has left none who are of kindred to him it shall go to the Crown.

PART V.*

OF THE DISTRIBUTION OF AN INTESTATE'S PROPERTY :

(a.)—*Where he has left Lineal Descendants.*

29. The rules for the distribution of the intestate's property (after deducting the widow's share, if he has left a widow) amongst his lineal descendants are as follow.—
Rules of distribution.

30. Where the intestate has left surviving him a child or children, but no more remote lineal descendant through a deceased child, the property shall belong to his surviving child if there be only one, or shall be equally divided among all his surviving children.

31. Where the intestate has not left surviving him any child, but has left a grandchild or grandchildren, and no more remote descendant through a deceased grandchild, the property shall belong to his surviving grandchild if there be only one, or shall be equally divided among all his surviving grandchildren.

Illustrations.

(a) A has three children, and no more—John, Mary, and Henry. They all die before the father. John leaving two children, Mary three, and Henry four. Afterwards A dies intestate, leaving those nine grandchildren and no descendant of any deceased grandchild: Each of his grandchildren shall have one-ninth.

* Part V does not apply to Parsis—See the Parsi Intestate Succession Act (XXI. of 1865), s. 8.

any public account, such officer may, in his discretion, instead of impounding the instrument, require a duly-stamped receipt to be substituted therefor.

35. No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having, by law or consent of parties, authority to receive evidence, or shall be acted upon, registered, or authenticated by any such person or by any public officer, unless such instrument is duly stamped.

Provided that—

- (a) any such instrument not being an instrument chargeable with a duty of one anna only "*or half an anna,*"* or a bill of exchange or promissory note, shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;
- (b) *where any person from whom a stamped-receipt could have been demanded, has given an unstamped receipt, and such receipt, if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the person tendering it*
- (c) *where a contract or agreement of any kind is effected by correspondence consisting of two or more letters, and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped;*
- (d) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court other than a proceeding under Chapter XII. or Chapter XXXVI. of the Code of Criminal Procedure, 1898;†

* These words have been added by Act V. of 1906, s 3.

† Act V. of 1898.

(b.) A left no child, but left eight grandchildren, and two children of a deceased grandchild: The property is divided into nine parts, one of which is allotted to each grandchild; and the remaining one-ninth is equally divided between the two great-grandchildren.

(c.) A has three children, John, Mary, and Henry. John dies leaving four children, and one of John's children dies leaving two children. Mary dies leaving one child. A afterwards dies intestate: One-third of his property is allotted to Henry, one-third to Mary's child; and one-third is divided into four parts, one of which is allotted to each of John's three surviving children, and the remaining part is equally divided between John's two grandchildren.

(b).—Where the Intestate has left no Lineal Descendants.

34. Where an intestate has left no lineal descendants, the Rules of distribution where intestate has left no lineal descendants. rules for the distribution of his property (after deducting the widow's share if he has left a widow) are as follow:—

Where intestate's father living.

35. If the intestate's father be living, he shall succeed to the property.

36. If the intestate's father is dead, but the intestate's mother is living, and there are also brothers or sisters of the intestate living, and there is no child living of any deceased brother or sister, the mother and each living brother or sister shall succeed to the property in equal shares.

Illustration.

A dies intestate survived by his mother and two brothers of the full blood, John and Henry, and a sister Mary, who is the daughter of his mother, but not of his father. The mother takes one-fourth, each brother takes one-fourth, and Mary, the sister of half-blood, takes one-fourth.

37. If the intestate's father is dead, but the intestate's mother is living, and if any brother or sister, and the child or children of any brother or sister who may have died in the intestate's lifetime, are also living, then the mother and each living brother or sister, and the living child or children of each deceased brother or sister, shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

refund any portion of the penalty in excess of five rupees which has been paid in respect of such instrument.

(2) When such instrument has been impounded only because it has been written in contravention of section 13 or section 14, *the Collector* may refund the whole penalty so paid.

In s. 39, sub s. (1), line 1, the italicized word *the* has been substituted for the letter 'a,' the italicized words and figures, *section 38, sub-section (1)*, have been substituted for the words and figures, "the first paragraph of section 33," and the other italics have been newly added, while the italicized figures 13 and 14 in sub-s (2) have been substituted for the figures "12" and "13" respectively, and the italicized words, *the Collector*, have been substituted for the word "he."

40. (1) When the Collector impounds any instrument under

Collector's power to stamp section 33, or receives any instrument instruments impounded. sent to him under *section 38, sub-section (2), not being an instrument chargeable with a duty of one anna "or half an anna"** only, or a bill of exchange or promissory note, he shall adopt the following procedure :—

(a.) If he is of opinion that such instrument is duly stamped, or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped, or that it is not so chargeable, as the case may be.

(b.) If *he* is of opinion that such instrument is chargeable with duty, and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of five rupees, or, if *he thinks fit*, "an amount not exceeding"† ten times the amount of the proper duty or of the deficient portion thereof, *whether such amount exceeds or falls short of five rupees.*

In s. 40 (1), the italicized words and figures have been substituted for the words and figures, "the second clause of section 35."

In cl. (b), the italicized word *he* has been substituted for the words, "the Collector," the italicized words, *he thinks fit*, are new, and the ten words last italicized have been substituted for the words, "exceeds five rupees, then such penalty, not less than five rupees, and not more than ten times the amount of such duty or portion, as he thinks fit."

Provided that, when such instrument has been impounded only because it has been written in contravention of section 13 or

* These words have been inserted by Act V. of 1906, s. 3

† These words have been inserted by Act XV. of 1904, s. 6.

47. A father, whatever his age may be, may, by will, appoint a
 Testamentary guardian. guardian or guardians for his child during
 minority.

48. A will or any part of a will, the making of which has been
 Will obtained by fraud, caused by fraud or coercion, or by such
 coercion, or importunity. importunity as takes away the free agency
 of the testator, is void.

Illustrations

(a) A falsely and knowingly represents to the testator that the testator's only child is dead, or that he has done some unattractive act, and thereby induces the testator to make a will in his (A's) favour, such will has been obtained by fraud, and is invalid

(b) A, by fraud and deception, prevails upon the testator to bequeath a legacy to him. The bequest is void.

(c) A, being a prisoner by lawful authority, makes his will. The will is not invalid by reason of the imprisonment

(d) A threatens to shoot B, or to burn his house, or to cause him to be arrested on a criminal charge unless he makes a bequest in favour of C. B, in consequence, makes a bequest in favour of C. The bequest is void, the making of it having been caused by coercion.

(e) A being of sufficient intellect, if undisturbed by the influence of others, to make a will, yet, being so much under the control of B that he is not a free agent, makes a will dictated by B. It appears that he would not have executed the will but for fear of B. The will is invalid

(f) A, being in so feeble a state of health as to be unable to resist importunity, is pressed by B to make a will of a certain purport, and does so merely to purchase peace, and in submission to B. The will is invalid.

(g) A being in such a state of health as to be capable of exercising his own judgment and volition, B uses urgent intercession and persuasion with him to induce him to make a will of a certain purport. A, in consequence of the intercession, and persuasion, but in the free exercise of his judgment and volition, makes his will in the manner recommended by B. The will is not rendered invalid by the intercession and persuasion of B.

(h) A, with a view to obtaining a legacy from B, pays him attention and flatters him, and thereby produces in him a capricious partiality to A. B, in consequence of such attention and flattery, makes his will, by which he leaves a legacy to A. The bequest is not rendered invalid by the attention and flattery of A.

49. A will is liable to be revoked or altered by the maker of
 Will may be revoked or it at any time when he is competent to
 altered. dispose of his property by will.

per duty and penalty (stating the amount of each) have been levied in respect thereof, and the name and residence of the person paying them.

(2) Every instrument so endorsed shall thereupon be admissible in evidence, and may be registered and acted upon and authenticated as if it had been duly stamped, and shall be delivered on his application in this behalf to the person from whose possession it came into the hands of the officer impounding it, or as such person may direct:

Provided that—

(a) no instrument which has been admitted in evidence upon payment of duty and a penalty under section 35 shall be so delivered before the expiration of one month from the date of such impounding, or if the Collector has certified that its further detention is necessary, and has not cancelled such certificate:

(b) nothing in this section shall affect the Code of Civil Procedure,* section 144, clause 3.

"35," "40," and "41," substituted for "34," "37," and "38," respectively.

43. The *taking of proceedings or the payment of a penalty* Prosecution for offence under this chapter in respect of *any* instrument shall not bar the prosecution of any person who appears to have committed an offence against the Stamp-law in respect of such instrument:

The words first italicized are new, and the word next italicized, *any* substituted for "an."

Provided that no such prosecution shall be instituted in the case of any instrument in respect of which such a penalty has been paid, unless it appears to the Collector that the offence was committed with an intention of evading payment of the proper duty.

"*Provided that*" substituted for "But"

44. (1) When any duty or penalty has been paid under section 35, section 37, section 40, or section 41, by any person in respect of an instrument, and, by agreement, or under
Persons paying duty or penalty may recover same in certain cases.

* Act XIV. of 1882.

of eighteen years, dispose of his property by a will made as is mentioned in section 53.

Such wills are called privileged wills.

Illustrations.

(a) A, the surgeon of a regiment, is actually employed in an expedition. He is a soldier actually employed in an expedition, and can make a privileged will.

(b) A is at sea in a merchant-ship, of which he is the purser. He is a mariner, and, being at sea, can make a privileged will.

(c) A, a soldier, serving in the field against insurgents, is a soldier engaged in actual warfare, and as such can make a privileged will.

(d) A, a mariner of a ship in the course of a voyage, is temporarily on shore while she is lying in harbour. He is, in the sense of the words used in this clause, a mariner at sea, and can make a privileged will.

(e) A, an admiral who commands a naval force, but who lives on shore, and only occasionally goes on board his ship, is not considered as at sea, and cannot make a privileged will.

(f) A mariner serving on a military expedition, but not being at sea, is considered as a soldier, and can make a privileged will.

Mode of making, and rules for executing, privileged wills.

53. Privileged wills may be in writing, or may be made by word of mouth.

The execution of them shall be governed by the following rules:—

First.—The will may be written wholly by the testator with his own hand. In such case it need not be signed nor attested.

Second.—It may be written wholly or in part by another person, and signed by the testator. In such case it need not be attested.

Third.—If the instrument purporting to be a will is written wholly or in part by another person, and is not signed by the testator, it shall be considered to be his will if it be shown that it was written by the testator's directions, or that he recognized it as his will.

If it appear on the face of the instrument that the execution of it in the manner intended by him was not completed, the instrument shall not, by reason of that circumstance, be invalid, provided that his non-execution of it can be reasonably ascribed to some cause other than the abandonment of the testamentary intentions expressed in the instrument.

first-mentioned person, and authenticated by the person impounding such instrument.

In s. 46 (r), the italicized word *the* has been substituted for the letter *a*, and the other italicized words and figures have been substituted for the words and figures, "the second paragraph of section 35 be"

47. When any bill of exchange, promissory note, or cheque, chargeable with the duty of one anna, is presented for payment unstamped, the person to whom it is so presented may affix thereto the necessary adhesive stamp, and, upon cancelling the same in manner hereinbefore provided, may pay the sum payable upon such bill, note, or cheque, and may charge the duty against the person who ought to have paid the same, or deduct it from the sum payable as aforesaid, and such bill, note, or cheque shall, so far as respects the duty, be deemed good and valid :

The opening words of the section were "When any bill of exchange or promissory note chargeable," &c

Provided that nothing herein contained shall relieve any person from any penalty or proceeding to which he may be liable in relation to such bill, note, or cheque.

The italicized words, *provided that*, have been substituted for "But," and the next italicized words substituted for "he may have incurred."

48. All duties, penalties, and other sums required to be paid Recovery of duties and under this Chapter may be recovered by penalties. the Collector by distress and sale of the moveable property of the person from whom the same are due, or by any other process for the time being in force for the recovery of arrears of land-revenue.

CHAPTER V.

ALLOWANCES FOR STAMPS IN CERTAIN CASES.

49. Subject to such rules as may be made by the Governor-General in Council as to the evidence to be required, or the enquiry to be made, the Collector may, on application made within the period prescribed in section 50, and if he is satisfied as to the facts, make allowances

56. Every will shall be revoked by the marriage of the maker, except a will made in exercise of a power of appointment, when the property over which the power of appointment is exercised would not, in default of such appointment, pass to his or her executor or administrator, or to the person entitled in case of intestacy.

Explanation.—Where a man is invested with power to determine the disposition of property of which he is not the owner, he is said to have power to appoint such property.

57. No unprivileged will or codicil, nor any part thereof, shall be revoked otherwise than by marriage, or by another will or codicil, or by some writing declaring an intention to revoke the same, and executed in the manner in which an unprivileged will is hereinbefore required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

Illustrations

(a) A has made an unprivileged will. Afterwards A makes another unprivileged will which purports to revoke the first. This is a revocation.

(b) A has made an unprivileged will. Afterwards A, being entitled to make a privileged will, makes a privileged will, which purports to revoke his unprivileged will. This is a revocation.

58. No obliteration, interlineation, or other alteration made in any unprivileged will after the execution thereof shall have any effect, except so far as the words or meaning of the will shall have been thereby rendered illegible or undiscernible, unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the will; save that the will, as so altered, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the will opposite or near to such alteration or at the foot or end of, or opposite to, a memorandum referring to such alteration, and written at the end or some other part of the will.

59. A privileged will or codicil may be revoked by the testator by an unprivileged will or codicil, or by any act expressing an intention to

rendered useless, although the same, being a bill of exchange or cheque, may have been presented for acceptance or accepted or endorsed, or, being a promissory note, may have been delivered to the payee: provided that another completed and duly-stamped bill of exchange, cheque, or promissory note is produced identical in every particular, except in the correction of such omission or error as aforesaid, with the spoiled bill, cheque, or note:

- (d) the stamp used for an instrument executed by any party thereto *which*—

The words, "any of the following instruments, that is to say," after "for," have been omitted, and the word *which* substituted for "but."

- (1) *has been* afterwards found to be absolutely void in law from the beginning,

The words, *has been*, have been inserted, and the words, "by a competent Court," after the word "found," have been omitted

- (2) *has been* afterwards found unfit, by reason of any error or mistake therein for the purpose originally intended:

- (3) by reason of the death of any person, by whom it is necessary that it should be executed, without having executed the same, or of the refusal of any such person to execute the same, cannot be completed so as to effect the intended transaction in the form proposed:

- (4) for want of the execution thereof by some material party, and his inability or refusal to sign the same, is in fact incomplete and insufficient for the purpose for which it was intended:

- (5) by reason of the refusal of any person to act under the same, *or to advance any money intended to be thereby secured*, or by the refusal or non-acceptance of any office thereby granted, totally fails of the intended purpose:

The italicized words are new.

stances of the testator and of his family, and into every fact, a knowledge of which may conduce to the right application of the words which the testator has used.

Illustrations.

(a.) A, by his will, bequeaths 1,000 rupees to his eldest son,* or to his youngest grandchild, or to his cousin Mary. A Court may make inquiry in order to ascertain to what person the description in the will applies.

(b.) A, by his will, leaves to B "his estate called Black Acre." It may be necessary to take evidence in order to ascertain what is the subject-matter of the bequest, that is to say, what estate of the testator's is called Black Acre.

(c.) A, by his will, leaves to B "the estate which he purchased of C." It may be necessary to take evidence in order to ascertain what estate the testator purchased of C.

68. Where the words used in the will to designate or describe a legatee, or a class of legatees, sufficiently show what is meant, an error in the name or description shall not prevent the legacy from taking effect.

A mistake in the name of a legatee may be corrected by a description of him, and a mistake in the description of a legatee may be corrected by the name.

Illustrations.

(a.) A bequeaths a legacy "to Thomas, the second son* of his brother John." The testator has an only brother, named John, who has no son named Thomas, but has a second son whose name is William. William shall have the legacy.

(b.) A bequeaths a legacy "to Thomas, the second son of his brother John." The testator has an only brother, named John, whose first son is named Thomas, and whose second son is named William. Thomas shall have the legacy.

(c.) The testator bequeaths his property "to A and B, the legitimate children of C." C has no legitimate child, but has two illegitimate children, A and B. The bequest to A and B takes effect, although they are illegitimate.

* In applying ss. 62, 63, 93, 96, 98, 99, 100, 101, 102, and 103 of the said Succession Act to wills and codicils made under this Act (XXI. of 1870), the words, "son," "sons," "child," and "children," shall be deemed to include an adopted child; and the word "grandchildren" shall be deemed to include the children, whether adopted or natural-born, of a child, whether adopted or natural-born; and the expression, "daughter-in-law" shall be deemed to include the wife of an adopted son.—Hindu Wills Act (XXI. of 1870), s. 6.

- (1) in the cases mentioned in clause (d) (5), within two months of the date of the instrument ;
- (2) in the case of a stamped paper on which no instrument has been executed by any of the parties thereto, within six months after the stamp has been spoiled ;
- (3) in the case of a stamped paper in which an instrument has been executed by any of the parties thereto, within six months after the date of the instrument, or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed :

Provided that—

- (a) when the spoiled instrument has been, for sufficient reasons, sent out of British India, the application may be made within six months after it has been received back in British India ;
- (b) when, from unavoidable circumstances, any instrument for which another instrument has been substituted cannot be given up to be cancelled within the afore-said period, the application may be made within six months after the date of execution of the substituted instrument.

51. *The Chief Controlling Revenue-authority may, without limit of time, make allowance for stamped papers used for printed forms of instruments "by any banker or"* by any incorporated company or other body corporate, if, for any sufficient reason, such forms have ceased to be required by the said "banker,"* company or body corporate, provided that such authority is satisfied that the duty in respect of such stamped papers has been duly paid.*

52. (a) When any person has inadvertently used for an instrument chargeable with duty a stamp of a description other than that prescribed for such instrument by the rules made under this Act, or a stamp of greater value than was necessary, or has inadvertently used any stamp for an instrument not chargeable with any duty, or

* In s 51, the words quoted have been inserted by Act V. of 1906, s. 6.

perty, and it shall not be lawful to reject any part of the description as erroneous, because the testator had other property to which such part of the description does not apply.

Explanation.—In judging whether a case falls within the meaning of this section, any words which would be liable to rejection under section 65 are to be considered as struck out of the will.

Illustrations.

(a.) A bequeaths to B "his marsh-lands lying in L, and in the occupation of X." The testator had marsh-lands lying in L, some of which were in the occupation of X, and some not in the occupation of X. The bequest shall be considered as limited to such of the testator's marsh-lands lying in L as were in the occupation of X.

(b.) A bequeaths to B "his marsh-lands lying in L, and in the occupation of X, comprising 1,000 bighas of land." The testator had marsh-lands lying in L, some of which were in the occupation of X, and some not in the occupation of X. The measurement is wholly inapplicable to the marsh-lands of either class, or to the whole taken together. The measurement shall be considered as struck out of the will, and such of the testator's marsh-lands lying in L as were in the occupation of X shall alone pass by the bequest.

67. Where the words of the will are unambiguous, but it is

Extrinsic evidence admissible in cases of latent ambiguity found by extrinsic evidence that they admit of applications, one only of which can have been intended by the testator, extrinsic evidence may be taken to show which of these applications was intended.

Illustrations.

(a.) A man, having two cousins of the name of Mary, bequeaths a sum of money to "his cousin Mary." It appears that there are two persons, each answering the description in the will. That description, therefore, admits of two applications, only one of which can have been intended by the testator. Evidence is admissible to show which of the two applications was intended.

(b.) A, by his will, leaves to B "his estate called Sultanpur Khurd." It turns out that he had two estates called Sultanpur Khurd: Evidence is admissible to show which estate was intended.

68. Where there is an ambiguity or deficiency on the face

Extrinsic evidence inadmissible in cases of patent ambiguity or deficiency. of the will, no extrinsic evidence as to the intentions of the testator shall be admitted.

In s. 54, the italicized words, *or stamps*, are new, and the italicized word *have* has been substituted for "has."

In cl. (a) the italicized words, *such stamp or stamps were*, have been substituted for the words, "it was," and the word *them* has been substituted for "it"

In cl. (c), line 1, the italicized words, *they were*, have been substituted for the words, "it was," and, in line 2, the italicized words, *they were*, have been substituted for "it is"

55. *When any duly-stamped debenture is renewed by the issue of Allowance on renewal of a new debenture in the same terms, the certain debentures. Collector shall, upon application made within one month, repay to the person issuing such debenture the value of the stamp on the original or on the new debenture, whichever shall be less:*

Provided that the original debenture is produced before the Collector, and cancelled by him in such manner as the Governor-General in Council may direct.

Explanation.—A debenture shall be deemed to be renewed in the same terms within the meaning of this section notwithstanding the following changes:—

- (a) *the issue of two or more debentures in place of one original debenture, the total amount secured being the same,*
- (b) *the issue of one debenture in place of two or more original debentures, the total amount secured being the same;*
- (c) *the substitution of the name of the holder at the time of renewal for the name of the original holder, and*
- (d) *the alteration of the rate of interest or the dates of payment thereof.*

CHAPTER VI.

REFERENCE AND REVISION.

56. (1) *The powers exercisable by a Collector under Chapter Control of and statement IV. and Chapter V. "and under clause of case to Chief Controlling (a) of the first proviso to section 26"* Revenue-authority. shall in all cases be subject to the control of the Chief controlling Revenue-authority.*

* The words quoted have been added by Act XV. of 1904, s. 7.

L. The general words, "all his marsh-lands in L," are restricted by the gift to A. A takes the whole of the farm in the occupation of B, including that portion of the farm which consists of marsh-lands in L.

(b) The testator (a sailor on ship-board) bequeathed to his mother his gold ring, buttons, and chest of clothes, and to his friend A (a ship-mate) his red box, clasp-knife, and all things not before bequeathed. The testator's share in a house does not pass to A under this bequest.

(c) A, by his will, bequeathed to B all his house-hold furniture, plate, linen, china books, pictures, and all other goods of whatever kind; and afterward bequeathed to B a specified part of his property. Under the first bequest, B is entitled only to such articles of the testator's as are of the same nature with the articles therein enumerated.

71. Where a clause is susceptible of two meanings, according to one of which it has some effect, and according to the other it can have none, the former is to be preferred.

72. No part of a will is to be rejected as destitute of meaning if it is possible to put a reasonable construction upon it.

73. If the same words occur in different parts of the same will, they must be taken to have been used everywhere in the same sense, unless there appears an intention to the contrary.

74. The intention of the testator is not to be set aside, because it cannot take effect to the full extent, but effect is to be given to it as far as possible.

Illustration.

The testator, by a will made on his death-bed, bequeathed all his property to C D for life, and after his decease to a certain hospital. The intention of the testator cannot take effect to its full extent, because the gift to the hospital is void under section 105, but it shall take effect so far as regards the gift to C D.

75. Where two clauses or gifts in a will are irreconcilable, so that they cannot possibly stand together, the last shall prevail.

Illustrations.

(a) The testator, by the first clause of his will, leaves his estate of Ramnagar "to A," and, by the last clause of his will, leaves it "to B, and not to A." B shall have it.

and, in case of difference, the opinion of the majority shall prevail.

In s. 57 (1) the italicized figures and word, 56, *sub-section (2)*, have been substituted for the figures "45."

In cl. (b) s. 57 (1) the italicized words, "*or in Ajmere,*" and in cl. (c) the words "*or in British Baluchistan*" are new.

58. If the High Court or Chief Court is not satisfied that the statements contained in the case are sufficient to enable it to determine the questions raised thereby, the Court may refer the case back to the Revenue-authority by which it was stated, to make such additions thereto or alterations therein as the Court may direct in that behalf.

59. (1) The High Court or Chief Court, upon the hearing of any such case, shall decide the questions raised thereby, and shall deliver its judgment thereon containing the grounds on which such decision is founded.

(2) *The Court* shall send to the Revenue-authority by which the case was stated a copy of such judgment under the seal of the Court and the signature of the Registrar; and the Revenue-authority shall, on receiving such copy, dispose of the case conformably to such judgment.

In s. 59 (2), the italicized words, "*The Court*" have been substituted for the words "and it," the old section not being divided into two clauses as here.

60. (1) If any Court other than a Court mentioned in section 57 feels doubt as to the amount of duty to be paid in respect of any instrument under proviso (a) to section 35, the Judge may draw up a statement of the case, and refer it, with his own opinion thereon, for the decision of the High Court or Chief Court to which, if he were the Chief Controlling Revenue-authority, he would, under section 57 refer the same.

(2) Such Court shall deal with the case as if it had been referred under section 57, and send a copy of its judgment under the seal of the Court and the signature of the Registrar to the *Chief Controlling Revenue-authority and another like copy to the Judge making the reference*, who shall, on receiving such copy, dispose of the case conformably to such judgment.

80. Where a bequest is made to the "heirs" or "right heirs," or "relations," or "nearest relations," or "family," or "kindred," or "nearest of kin," or "next of kin," of a particular person, without any qualifying terms, and the class so designated forms the direct and independent object of the bequest, the property bequeathed shall be distributed as if it had belonged to such person, and he had died intestate in respect of it leaving assets for the payment of his debts independently of such property.

Illustrations.

(a) A leaves his property "to his own nearest relations." The property goes to those who would be entitled to it if A had died intestate, leaving assets for the payment of his debts independently of such property.

(b) A bequeaths 10,000 rupees "to B for his life, and after the death of B to his own right heirs." The legacy after B's death belongs to those who would be entitled to it if it had formed part of A's unbequeathed property,

(c) A leaves his property to B; but, if B dies before him, to B's next of kin. B dies before A. The property devolves as if it had belonged to B, and he had died intestate, leaving assets for the payment of his debts, independently of such property.

(d) A leaves 10,000 rupees "to B for his life, and, after his decease to the heirs of C." The legacy goes as if it had belonged to C, and he had died intestate, leaving assets for the payment of his debts independently of the legacy.

81. Where a bequest is made to the "representatives," or "legal representatives," or "personal representatives," &c., of particular person, "executors or administrators," of a particular person, and the class so designated forms the direct and independent object of the bequest, the property bequeathed shall be distributed as if it had belonged to such person, and he had died intestate in respect of it.

Illustration.

A bequest is made to the "legal representative" of A. A has died intestate and insolvent. B is his administrator. B is entitled to receive the legacy, and shall apply it in the first place to the discharge of such part of A's debts as may remain unpaid: if there be any surplus, B shall pay it to those persons who, at A's death, would have been entitled to receive any property of A's which might remain after payment of his debts, or to the representatives of such persons.

lector considers him to have committed in respect of such instrument:

Provided that—

(a) no such prosecution shall be instituted where the amount (including duty and penalty) which, according to the determination of such Court, was payable in respect of the instrument under section 35, is paid to the Collector unless he thinks that the offence was committed with an intention of evading payment of the proper duty:

(b) except for the purposes of such prosecution, no declaration made under this section shall affect the validity of any order admitting any instrument in evidence, or of any certificate granted under section 42.

In s 61 (1) the italicized words are new, and the italicized figures 35 have been substituted for "34" throughout the section

In sub-s. (2), the words first italicized have been substituted for the words, "if it," and the italicized word *it* is new.

In sub-s (3), the italicized word and figure, *sub-section (2)*, have been substituted for "this section"

In sub-s. (4), the italicized figures 42 and 43 have been substituted for "39" and "40," respectively.

In the proviso, the italicized figures 35 in cl (a) and 42 in cl (b) have been substituted for "34" and "39," respectively.

CHAPTER VII.

CRIMINAL OFFENCES AND PROCEDURE.

62. (1) Any person—

(a) drawing, making, issuing, endorsing, or transferring or Penalty for executing, etc., signing otherwise than as a witness, or instrument not duly stamped. presenting for acceptance or payment, or accepting, paying, or receiving payment of, or in any manner negotiating, any bill of exchange, cheque, or promissory note without the same being duly stamped, or

(b) executing or signing otherwise than as a witness any other instrument chargeable with duty without the same being duly stamped, or

Illustrations.

(a) A bequest is made—

to A and his children,
to A and his children by his present wife,
to A and his heirs,
to A and the heirs of his body,
to A and the heirs male of his body,
to A and the heirs female of his body,
to A and his issue,
to A and his family,
to A and his descendants,
to A and his representatives,
to A and his personal representatives,
to A, his executors, and administrators :

In each of these cases, A takes the whole interest which the testator had in the property.

(b) A bequest is made to A and his brothers A and his brothers are jointly entitled to the legacy

(c) A bequest is made to A for life, and after his death to his issue, At the death of A the property belongs in equal shares to all persons who shall then answer the description of issue of A.

85* Where a bequest is made to a class of persons under a Bequest to class of persons under general description only, no one to whom the words or the description are not, in their ordinary sense, applicable shall take the legacy.

86. The word "children" in a will applies only to lineal descendants in the first degree, the word "grandchildren" applies only to lineal descendants in the second degree, of the person whose "children," or "grandchildren" are spoken of;

the words "nephews" and "nieces" apply only to children of brothers or sisters;

* S. 85 applies to the wills of Hindus, &c., in the Lower Provinces of Bengal and in the towns of Madras and Bombay.—See the Hindu Wills Act (XXI. of 1870), s. 2.

65. Any person who—

Penalty for refusal to give receipt, and for devices to evade duty on receipts.

(a) being required under section 30 to give a receipt, refuses or neglects to give the same, or

(b) with intent to defraud the Government of any duty, upon a payment of money or delivery of property exceeding twenty rupees in amount or value, gives a receipt for an amount or value not exceeding twenty rupees, or separates or divides the money or property paid or delivered,

shall be *punishable* with fine which may extend to one hundred rupees.

66. Any person who—

(a) receives, or takes credit for, any premium or considera-

Penalty for not making out policy or making one not duly stamped.

tion for any contract of insurance, and does not, within one month after receiving, or taking credit for, such premium or consideration, make out and execute a duly-stamped policy of such insurance, or

(b) makes, executes, or delivers out any policy which is not duly stamped, or pays or allows in account, or agrees to pay or allow in account, any money upon, or in respect of, any such policy.

shall be *punishable* with fine which may extend to two hundred rupees.

67. Any person drawing or executing a bill of exchange or

Penalty for not drawing full number of bills or marine policies purporting to be in sets.

a policy of marine insurance purporting to be drawn or executed in a set of two or more, and not at the same time drawing or executing on paper duly stamped the whole number of bills or policies of which such bill or policy purports the set to consist, shall be *punishable* with fine which may extend to one thousand rupees.

68. Any person who—

(a) with intent to defraud the Government of duty, draws,

Penalty for post-dating bills; and

makes, or issues any bill of exchange or promissory note bearing a date subse-

(e.) A bequeathed a legacy to "the children of B." B never had any legitimate child. C and D had, at the date of the will, acquired the reputation of being children of B. After the date of the will, and before the death of the testator, E and F were born, and acquired the reputation of being children of B. Only C and D are objects of the bequest.

(f.) A makes a bequest in favour of his child by a certain woman, not his wife. B had acquired, at the date of the will, the reputation of being the child of A by the woman designated. B takes the legacy.

(g.) A makes a bequest in favour of his child to be born of a woman, who never becomes his wife. The bequest is void.

(h.) A makes a bequest in favour of the child of which a certain woman, not married to him, is pregnant. The bequest is valid.

88* Where a will purports to make two bequests to the same person, and a question arises whether the testator intended to make the second bequest instead of, or in addition to, the first, it there is nothing in the will to show what he intended, the following rules shall prevail in determining the construction to be put upon the will:—

First.—If the same specific thing is bequeathed twice to the same legatee in the same will, or in the will, and again in a codicil, he is entitled to receive that specific thing only.

Second.—Where one and the same will or one and the same codicil purports to make, in two places, a bequest to the same person of the same quantity or amount of anything, he shall be entitled to one such legacy only.

Third.—Where two legacies of unequal amount are given to the same person in the same will or in the same codicil, the legatee is entitled to both.

Fourth.—Where two legacies, whether equal or unequal in amount, are given to the same legatee, one by a will and the other by a codicil, or each by a different codicil, the legatee is entitled to both legacies.

Explanation.—In the four last rules, the word "will" does not include a codicil.

Illustrations.

(a.) A, having ten shares, and no more, in the Bank of Bengal, made his will, which contains near its commencement the words, "I bequeath my

* This section and s. 88-103 (both inclusive) apply to the wills of Hindus, &c., in the Lower Provinces of Bengal, and in the towns of Madras and Bombay.—See the Hindu Wills Act (XXI. of 1870), s. 2.

word *hereby* has been substituted for "thereby;" and the italicized words in sub-s. (2) have been inserted.

71. No Magistrate other than a Presidency Magistrate or a Jurisdiction of Magistrates. Magistrate whose powers are not less than those of a Magistrate of the second class shall try any offence under this Act.

72. Every such offence committed in respect of any instrument may be tried in any district or presidency-town in which such instrument is found, as well as in any district or presidency-town in which such offence might be tried under the *Code of Criminal Procedure** for the time being in force.

The italicized words, *Code of*, have been substituted for "law relating to."

Old s. 72 has been omitted here It ran as follows —

"72. *Operation of other laws not barred* — Nothing in this Act shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act, or the rules made under it

"Provided that no person shall be punished twice for the same offence."

CHAPTER VIII.

SUPPLEMENTAL PROVISIONS.

73. *Every public officer having in his custody any registers, Books, etc., to be open to books, records, papers, documents, or proceedings, the inspection whereof may tend to secure any duty, or to prove or lead to the discovery of any fraud or omission in relation to any duty, shall, at all reasonable times, permit any person authorized in writing by the Collector to inspect for such purpose the registers, books, papers, documents, and proceedings, and to take such notes and extracts as he may deem necessary, without fee or charge.*

Powers to make rules relating to sale of stamps.

74. The Local Government, subject to the control of the Governor-General in Council, may make rules for regulating—

(a) the supply and sale of stamps and stamped papers,

* Act V. of 1898.

(c) A bequeaths all his property to B, except certain stocks and funds which he bequeaths to C. B is the residuary legatee.

90. Under a residuary bequest, the legatee is entitled to all property to which residue property belonging to the testator at the time of his death of which he has not made any other testamentary disposition which is capable of taking effect.

Illustration.

A, by his will, bequeaths certain legacies, one of which is void under section 105, and another lapses by the death of the legatee. He bequeaths the residue of his property to B. After the date of his will, A purchases a zemindari, which belongs to him at the time of his death. B is entitled to the two legacies and the zemindari as part of the residue.

91. If a legacy be given in general terms, without specifying the time when it is to be paid, the legatee in general terms has a vested interest in it from the day of the death of the testator, and, if he dies without having received it, it shall pass to his representatives.

92. If the legatee does not survive the testator, the legacy cannot take effect, but shall lapse and form part of the residue of the testator's property, unless it appear by the will that the testator intended that it should go to some other person.

In order to entitle the representatives of the legatee to receive the legacy, it must be proved that he survived the testator.

Illustrations.

(a.) The testator bequeaths to B "500 rupees which B owes him." B dies before the testator. The legacy lapses.

(b.) A bequest is made to A and his children.* A dies before the testator, or happens to be dead when the will is made. The legacy to A and his children lapses.

(c.) A legacy is given to A, and, in case of his dying before the testator to B. A dies before the testator. The legacy goes to B.

(d.) A sum of money is bequeathed to A for life, and after his death to B. A dies in the lifetime of the testator, B survives the testator. The bequest to B takes effect.

* See the Hindu Wills Act (XXI. of 1870), s. 6 (which is reproduced as foot-note at p. 23, *supra*).

78. Every Local Government shall *make provision for the* Act to be translated and *sale of translations of this Act in the* sold cheaply. principal vernacular languages of the territories administered by it at a price not exceeding four annas per copy.

The italicized words in the above section have been substituted for the words, "cause this Act to be carefully translated into," and the following words have been omitted after the words, "administered by it " "A full alphabetical index shall be added to every such translation, and the translation and index shall be printed and sold to the public "

79. *The Acts mentioned in Schedule II. are repealed to the extent specified in the fourth column thereof.*
Repeal.

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
3. ADOPTION-DEED , <i>that is to say, any instrument (other than a will) recording an adoption, or conferring or purporting to confer an authority to adopt</i>	Ten rupees.
ADVOCATE. <i>See ENTRY AS AN ADVOCATE (No. 30).</i>	
4. AFFIDAVIT , <i>including an affirmation or declaration in the case of persons by law allowed to affirm or declare instead of swearing</i> ..	One rupee.
<p style="text-align: center;"><i>Exemptions.</i></p> <p>Affidavit or declaration in writing when made—</p> <p>(a) as a condition of enlistment under the Indian Articles of War,*</p> <p>(b) for the immediate purpose of being filed or used in any Court or before the officer of any Court, or</p> <p>(c) for the sole purpose of enabling any person to receive any pension or charitable allowance.</p>	

* Act V. of 1869.

but his possession of it is deferred until a time later than the death of the testator by reason of a prior bequest or otherwise, and if a person answering the description is alive at the death of the testator, or comes into existence between that event and such later time, the property shall, at such later time, go to that person, or, if he be dead, to his representatives.

Illustrations.

(a) A bequeaths 1,000 rupees to the eldest son* of B. At the death of the testator, B has no son. The bequest is void.

(b) A bequeaths 1,000 rupees to B for life, and after his death to the eldest son of C. At the death of the testator, C had no son. Afterwards, during the life of B, a son is born to C. Upon B's death, the legacy goes to C's son.

(c) A bequeaths 1,000 rupees to B for life, and after his death to the eldest son of C. At the death of the testator, C had no son; afterwards, during the life of B, a son named D is born to C. D dies, then B dies. The legacy goes to the representative of D.

(d) A bequeaths his estate of Green Acre to B for life, and at his decease to the eldest son* of C. Up to the death of B, C has had no son. The bequest to C's eldest son is void.

(e) A bequeaths 1,000 rupees to the eldest son* of C, to be paid to him after the death of B. At the death of the testator, C has no son, but a son is afterwards born to him during the life of B, and is alive at B's death. C is entitled to the 1,000 rupees.

10. Where a bequest is made to a person not in existence at

the time of the testator's death, subject to a prior bequest contained in the will, the later bequest shall be void unless it comprises a whole of the remaining interest of the testator in the thing bequeathed.

Illustrations.

(a) A bequest is made to A for his life, and after his death to his eldest son. A has no son. Here the bequest to A's eldest son is void. It is not a whole of the remaining interest that remains to the testator. The bequest to A's eldest son for his life is void.

(b) A bequest is made to A for his life, and after his death to his daughters. A has daughters, some of whom were

* See the Indian Wills Act (XXI of 1870), s. 6 (which is reproduced as foot-note 23, *supra*)

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT	PROPER STAMP-DUTY.
<p>"6.* AGREEMENT RELATING TO DEPOSIT OF TITLE-DEEDS, PAWN OR PLEDGE, that is to say, any instrument evidencing an agreement relating to—</p> <p>(1) the deposit of title-deeds or instruments constituting or being evidence of the title to any property whatever (other than a marketable security), or</p> <p>(2) the pawn or pledge of moveable property,</p> <p>where such deposit, pawn or pledge has been made by way of security for the repayment of money advanced or to be advanced by way of loan or an existing or future debt—</p> <p>(a) if such loan or debt is repayable on demand or more than three months from the date of the instrument evidencing the agreement,</p> <p>(b) if such loan or debt is repayable not more than three months from the date of such instrument</p>	<p>The same duty as a Bill of Exchange [No. 13 (b)] for the amount secured</p> <p>Half the duty payable on a Bill of Exchange [No. 13 (b)] for the amount secured</p>
<p style="text-align: center;"><i>Exemption</i></p> <p style="text-align: center;">Instrument of pawn or pledge of goods if unattested "</p>	
<p>7. APPOINTMENT IN EXECUTION OF A POWER, whether of trustees or of property, moveable or immoveable, where made by any writing not being a Will</p>	<p>Fifteen rupees</p>

* Article 6 has been substituted for the original by Act XV. of 1904, s. 8.

Illustrations.

(a) A sum of money is bequeathed to A, to be paid to him at the age of 18, and, if he shall die before he attains that age, to B. A takes a vested interest in the legacy, subject to be divested and to go to B in case A shall die under 18.

(b) An estate is bequeathed to A, with a proviso that, if A shall dispute the competency of the testator to make a will, the estate shall go to B. A disputes the competency of the testator to make a will. The estate goes to B.

(c) A sum of money is bequeathed to A for life, and after his death to B, but, if B shall then be dead, leaving a son, such son is to stand in the place of B. B takes a vested interest in the legacy, subject to be divested if he dies leaving a son in A's lifetime.

(d) A sum of money is bequeathed to A and B, and if either should die during the life of C, then to the survivor living at the death of C. A and B die before C. The gift over cannot take effect, but the representative of A takes one-half of the money, and the representative of B takes the other half.

(e) A bequeaths to B the interest of a fund for life, and directs the fund to be divided at her death equally among her three children, or such of them as shall be living at her death. All the children of B die in B's lifetime. The bequest over cannot take effect, but the interests of the children pass to their representatives.

119. An ulterior bequest of the kind contemplated by the Condition must be strictly fulfilled. last preceding section cannot take effect unless the condition is strictly fulfilled.

Illustrations.

(a) A legacy is bequeathed to A with a proviso that, if he marries without the consent of B, C, and D, the legacy shall go to E. D dies. Even if A marries without the consent of B and C, the gift to E does not take effect.

(b) A legacy is bequeathed to A with a proviso that, if he marries without the consent of B, the legacy shall go to C. A marries with the consent of B. He afterwards becomes a widower, and marries again without the consent of B. The bequest to C does not take effect.

(c) A legacy is bequeathed to A, to be paid at 18 or marriage, with a proviso that, if A dies under 18 or marries without the consent of B, the legacy shall go to C. A marries under 18 without the consent of B. The bequest to C takes effect.

Original bequest not affected by invalidity of second.

120. If the ulterior bequest be not valid, the original bequest is not affected by it.

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
<p>XO. ARTICLES OF ASSOCIATION OF A COMPANY.</p> <p><i>Exemption.</i></p> <p><i>Articles of any Association not formed for profit, and registered under section 26 of the Indian Companies Act, 1882.*</i></p> <p><i>See also MEMORANDUM OF ASSOCIATION OF A COMPANY (No. 39).</i></p>	<p>Twenty-five rupees.</p>
<p>II. ARTICLES OF CLERKSHIP or contract whereby any person first becomes bound to serve as a clerk in order to his admission as an attorney in any High Court </p>	<p>Two hundred and fifty rupees.</p>
<p>ASSIGNMENT <i>See CONVEYANCE (No. 23), TRANSFER (No. 62), and TRANSFER OF LEASE (No. 63), as the case may be.</i></p>	
<p>ATTORNEY. <i>See ENTRY AS AN ATTORNEY (No. 30) and POWER-OF-ATTORNEY (No. 48).</i></p>	
<p>AUTHORITY TO ADOPT. <i>See ADOPTION DEED (No. 3).</i></p>	

* Act VI. of 1882.

123. Where a bequest is made with a condition superadded

Result of legatee rendering impossible or indefinitely postponing act for which no time specified, and on non-performance of which subject-matter to go over

that, unless the legatee shall perform a certain act, the subject-matter of the bequest shall go to another person, or the bequest shall cease to have effect, but no time is specified for the performance of the act, if the legatee takes any step which renders impossible or indefinitely postpones the performance of the act required, the legacy shall go as if the legatee had died without performing such act.

Illustrations.

[1865] (a) A bequest is made to A with a proviso that, unless he enters the army, the legacy shall go over to B. A takes holy orders, and thereby renders it impossible that he should fulfil the condition. B is entitled to receive the legacy.

(b) A bequest is made to A, with a proviso that it shall cease to have any effect if he does not marry B's daughter. A marries a stranger, and thereby indefinitely postpones the fulfilment of the condition. The bequest ceases to have effect.

124. Where the will requires an act to be performed by the

Performance of condition, legatee within a specified time, either as precedent or subsequent, a condition to be fulfilled before the within specified time.

legacy is enjoyed, or as a condition upon the non-fulfilment of which the subject-matter of the bequest is to go over to another person, or the bequest is to cease to have effect, the act must be performed within the time specified unless the performance of it be prevented by fraud, in which case such further

Further time in case of time shall be allowed as shall be requisite to make up for the delay caused by such fraud.

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.				PROPER STAMP-DUTY.								
13. BILL OF EXCHANGE— <i>contd.</i>				If drawn singly			If drawn in set of two, for each part of the set			If drawn in set of three, for each part of the set.		
(b) <i>where payable otherwise than on demand, but not more than one year after date or sight—</i>												
If the amount of the bill or note does not exceed				Rs As P			Rs As P.			Rs. As. P.		
200				0	2	0	0	1	0	0	1	0
if it exceeds Rs. 200 and does not exceed				400			0	4	0	0	2	0
Do.	400	do.	600	0	6	0	0	3	0	0	2	0
Do.	600	do	1,000	0	10	0	0	5	0	0	4	0
Do	1,000	do	1,200	0	12	0	0	6	0	0	4	0
Do.	1,200	do	1,600	1	0	0	0	8	0	0	6	0
Do.	1,600	do.	2,500	1	8	0	0	12	0	0	8	0
Do.	2,500	do.	5,000	3	0	0	1	8	0	1	0	0
Do.	5,000	do.	7,500	4	8	0	2	4	0	1	8	0
Do.	7,500	do.	10,000	6	0	0	3	0	0	2	0	0
Do.	10,000	do.	15,000	9	0	0	4	8	0	3	0	0
Do.	15,000	do.	20,000	12	0	0	6	0	0	4	0	0
Do.	20,000	do.	25,000	15	0	0	7	8	0	5	0	0
Do.	25,000	do.	30,000	18	0	0	9	0	0	6	0	0
and for every additional Rs. 10,000 or part thereof in excess of Rs. 30,000				6	0	0	3	0	0	2	0	0

fund, or so much of it as has not been exhausted upon the objects contemplated by the will, remains a part of the estate of the testator.

Illustrations.

(a) A directs that his trustees shall invest a sum of money in a particular way, and shall pay the interest to his son for life, and, at his death, shall divide the principal among his children - the son dies without having ever had a child. The fund, after the son's death, belongs to the estate of the testator.

(b.) A bequeaths the residue of his estate to be divided equally among his daughters, with a direction that they are to have the interest only during their lives, and that, at their decease, the fund shall go to their children. The daughters have no children. The fund belongs to the estate of the testator.

PART XVIII.*

OF BEQUESTS TO AN EXECUTOR.

128. If a legacy is bequeathed to a person who is named an executor of the will, he shall not take the legacy unless he proves the will, or otherwise manifests an intention to act as executor.

Legatee named as executor cannot take unless he shows intention to act as executor.

Illustration.

A legacy is given to A, who is named an executor. A orders the funeral according to the directions contained in the will, and dies a few days after the testator, without having proved the will : A has manifested an intention to act as executor.

* Part XVIII. applies to the wills of Hindus, Jainas, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay.—See the Hindu Wills Act (XXI. of 1870), s. 2.

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
15. BOND—<i>contd.</i>	
<i>where</i> the amount or value secured does not exceed Rs. 10	Two annas.
<i>Where it exceeds</i> Rs. 10 and does not exceed Rs. 50	Four annas.
Do. 50 do. 100	Eight annas
Do. 100 do. 200	One rupee.
Do. 200 do. 300	One rupee eight annas
Do. 300 do. 400	Two rupees.
Do. 400 do. 500	Two rupees eight annas
Do. 500 do. 600	Three rupees.
Do. 600 do. 700	Three rupees eight annas
Do. 700 do. 800	Four rupees
Do. 800 do. 900	Four rupees eight annas.
Do. 900 do. 1,000	Five rupees.
and for every Rs. 500 or part thereof in excess of Rs. 1,000	Two rupees eight annas.
See ADMINISTRATION BOND (<i>No. 2</i>), BOTTOMRY BOND (<i>No. 16</i>), CUSTOMS BOND (<i>No. 36</i>), INDEMNITY BOND (<i>No. 34</i>), RESPONDENTIA BOND (<i>No. 56</i>), SECURITY BOND (<i>No. 57</i>).	

Each of these legacies is specific.

(b) A, having Government promissory notes for 10,000 rupees, bequeaths to his executors "Government promissory notes for 10 000 rupees in trust to sell" for the benefit of B :

The legacy is specific

(c) A having property at Benares, and also in other places, bequeaths to B all his property at Benares :

The legacy is specific.

(d) A bequeaths to B—

his house in Calcutta ;

his zamindari of Rampur ;

his taluq of Ramnagar,

his lease of the indigo-factory of Salkya ;

an annuity of 500 rupees out of the rent of his zamindari of W :

A directs his zamindari of X. to be sold, and the proceeds to be invested for the benefit of B :

Each of these bequests is specific.

(e) A, by his will, charges his zamindari of Y with an annuity of 1,000 rupees to C during his life, and subject to this charge he bequeaths the zamindari to D :

Each of these bequests is specific.

(f) A bequeaths a sum of money—

to buy a house in Calcutta for B,

to buy an estate in zilla Faridpur for B

to buy a diamond ring for B,

to buy a horse for B ;

to be invested in shares in the Bank of Bengal for B,

to be invested in Government securities for B

A bequeaths to B—

"a diamond-ring ;"

"a horse ;"

"10,000 rupees worth of Government securities ,"

"an annuity of 500 rupees ,"

"2,000 rupees to be paid in cash ,"

"so much money as will produce 5,000 rupees four per cent. Government securities ."

These bequests are not specific.

(g) A, having property in England and property in India, bequeaths a legacy to B, and directs that it shall be paid out of the property which he may leave in India. He also bequeaths a legacy to C, and directs that it shall be paid out of the property which he may leave in England .

No one of these legacies is specific.

130. Where a sum certain is bequeathed, the legacy is not

Bequest of sum certain where stocks, &c, in which invested are described specific merely because the stocks, funds, or securities in which it is invested are described in the will.

SCHEDULE 1.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
17. CANCELLATION—<i>contd.</i>	
<i>See also RELEASE (No 55), REVOCATION OF SETTLEMENT (No. 58B), SURRENDER OF LEASE (No 61), REVOCATION OF TRUST (No. 64B).</i>	
18. CERTIFICATE OF SALE (<i>in respect of each property put up as a separate lot and sold</i>) granted to the purchaser of any property sold by public auction by a Civil or Revenue Court, or Collector or other Revenue-officer—	
(a) <i>where the purchase-money does not exceed Rs. 10</i>	<i>Two annas.</i>
(b) <i>where the purchase-money exceeds Rs 10, but does not exceed Rs. 25... ..</i>	<i>Four annas.</i>
(c) <i>in any other case</i>	<i>The same duty as a Conveyance (No. 23) for a consideration equal to the amount of the purchase-money only.</i>
19. CERTIFICATE OR OTHER DOCUMENT evidencing the right or title of the holder thereof, or any other person, either to any shares, scrip, or stock in or of any <i>incorporated</i> Company or <i>other body corporate</i> , or to become proprietor of shares, scrip, or stock in or of any <i>such</i> Company or <i>body</i>	<i>One anna.</i>

Illustrations.

(a) A, having a lease of a house for a term of years, 15 of which were unexpired at the time of his death, has bequeathed the lease to B for his life, and, after B's death, to C. B is to enjoy the property as A left it, although, if B lives for 15 years, C can take nothing under the bequest.

(b.) A having an annuity during the life of B, bequeaths it to C for his life, and, after C's death, to D. C is to enjoy the annuity as A left it, although, if B dies before D, D can take nothing under the bequest.

135. Where property comprised in a bequest to two or more

Sale and investment of persons in succession is not specifically proceeds of property be- bequeathed, it shall, in the absence of queathed to two or more any direction to the contrary, be sold, persons in succession. and the proceeds of the sale shall be invested in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct, and the fund thus constituted shall be enjoyed by the successive legatees according to the terms of the will.

Illustration.

A, having a lease for a term of years, bequeaths "all his property" to B for life, and after B's death to C. The lease must be sold, and the proceeds invested as stated in the text, and the annual income arising from the fund is to be paid to B for life. At B's death the capital of the fund is to be paid to C.

Where deficiency of assets to pay legacies, specific legacy not to abate with general legacies.

136. If there be a deficiency of assets to pay legacies, a specific legacy is not liable to abate with the general legacies.

PART XX.***OF DEMONSTRATIVE LEGACIES.****137.** Where a testator bequeaths a certain sum of money or

Demonstrative legacy de- a certain quantity of any other commodity, and refers to a particular fund or stock so as to constitute the same the primary fund or stock out of which payment is to be made, the legacy is said to be demonstrative.

* Part XX. applies to the wills of Hindus, Jains, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay.—See the Hindu Wills Act (XXI. of 1870), s. 2.

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY
23. CONVEYANCE—<i>contd.</i>	
<i>where the amount or value of the consideration for such conveyance as set forth therein does not exceed Rs 50 </i>	Eight annas.
<i>where it exceeds Rs 50 but does not exceed Rs 100</i>	One rupee.
<i>Do. 100 do. 200</i>	Two rupees
<i>Do. 200 do. 300</i>	Three rupees
<i>Do. 300 do. 400</i>	Four rupees
<i>Do. 400 do. 500</i>	Five rupees
<i>Do. 500 do. 600</i>	Six rupees.
<i>Do. 600 do. 700</i>	Seven rupees
<i>Do. 700 do. 800</i>	Eight rupees
<i>Do. 800 do. 900</i>	Nine rupees.
<i>Do. 900 do. 1,000</i>	Ten rupees.
<i>and for every Rs 500 or part thereof in excess of Rs. 1,000</i>	Five rupees
<i>Exemption.</i>	
Assignment of copyright by entry made under the Indian Copyright Act, 1847,* section 5.	
CO-PARTNERSHIP DEED — <i>See PARTNERSHIP (No. 40).</i>	

* Act XX. of 1847.

PART XXI.*

OF ADEEMPTION OF LEGACIES.

139. If anything which has been specifically bequeathed does not belong to the testator at the time of his death, or has been converted into property of a different kind, the legacy is adeemed; that is, it cannot take effect by reason of the subject-matter having been withdrawn from the operation of the will.

Illustrations.

(a.) A bequeaths to B—

“the diamond-ring presented to him by C,”

“his gold-chain,”

“a certain bale of wool;”

“a certain piece of cloth,”

“all his household-goods which shall be in or about his dwelling house in M Street in Calcutta at the time of his death:”

A, in his lifetime,—

sells or gives away the ring,

converts the chain into a cup;

converts the wool into cloth;

makes the cloth into a garment,

takes another house into which he removes all his goods:

Each of these legacies is adeemed

(b.) A bequeaths to B—

“the sum of 1 000 rupees in a certain chest,”

“all the horses in his stable:”

At the death of A, no money is found in the chest, and no horses in the stable. The legacies are adeemed

(c.) A bequeaths to B certain bales of goods. A takes the goods with him on a voyage. The ship and goods are lost at sea, and A is drowned. The legacy is adeemed.

140. A demonstrative legacy is not adeemed by reason that

Non-ademption of demonstrative legacy. the property on which it is charged by the will does not exist at the time of the death of the testator, or has been converted into property of a different kind. but it shall, in such case, be paid out of the general assets of the testator.

* Part XXI. applies to the wills of Hindus, Jainas, Sikhs and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay—See the Hindu Wills Act (XXI. of 1870), s. 2.

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
<p>25. COUNTERPART OR DUPLICATE—<i>contd.</i></p> <p><i>Exemption.</i></p> <p>Counterpart of any lease granted to a cultivator <i>when such lease is exempted from duty</i></p>	
<p>26. CUSTOMS-BOND—</p> <p>(a) <i>where the amount does not exceed Rs. 1,000</i> ...</p> <p>(b) <i>in any other case</i> . . .</p>	<p>The same duty as a Bond (No 15) for such amount.</p> <p>Five rupees.</p>
<p>27 DEBENTURE (whether a mortgage debenture or not), being a marketable security transferable by delivery, or by endorsement, or by separate instrument of transfer</p> <p><i>Explanation—The term Debenture includes any interest-coupons attached thereto, but the amount of such coupons shall not be included in estimating the duty</i></p> <p><i>Exemption</i></p> <p>A Debenture issued by an incorporated Company or other body corporate in terms of a registered Mortgage deed, duly stamped in respect of the full amount of debentures to be issued thereunder, whereby the company or body borrowing makes over, in whole or in part, their property to Trustees for the benefit of the Debenture-holders provided that the debentures so issued are expressed to be issued in terms of the said Mortgage-deed.</p>	<p>The same duty as a Bond (No 15) for the same amount.</p>

144 Where a portion of a fund is specifically bequeathed to

Order of payment where portion of fund specifically bequeathed to one legatee, and legacy charged on the same fund is bequeathed to another legatee, if the testator receives a portion of that fund, and the remainder of the fund is insufficient to pay both the specific and the demonstrative legacy, the specific legacy shall be paid first, and the residue (if any) of the fund shall be applied, so far as it will extend, in payment of the demonstrative legacy, and the rest of the demonstrative legacy shall be paid out of the general assets of the testator.

Illustration.

A bequeaths to B 1,000 rupees, part of the debt of 2,000 rupees due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. A afterwards receives 500 rupees part of that debt, and dies leaving only 1,500 rupees due to him from W. Of these 1,500 rupees, 1,000 rupees belong to B, and 500 rupees are to be paid to C. C is also to receive 500 rupees out of the general assets of the testator.

Ademption where stock specifically bequeathed does not exist at testator's death.

145. Where stock, which has been specifically bequeathed, does not exist at the testator's death, the legacy is adeemed.

Illustration.

A bequeaths to B—

“his capital stock of 1,000*l* in East India Stock,”

“his promissory notes of the Government of India for 10,000 rupees in their four per cent loan.”

A sells the stock and the notes. The legacies are adeemed.

146. Where stock, which has been specifically bequeathed, does only in part exist at the testator's death, the legacy is adeemed so far as regards that part of the stock which has ceased to exist.

Illustration.

A bequeaths to B “his 10,000 rupees in the 5½ per cent. loan of the Government of India.” A sells one-half of his 10,000 rupees in the loan in question. One-half of the legacy is adeemed.

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY
DOWER — <i>Instrument of. See SETTLEMENT (No 58).</i>	
DUPLICATE — <i>See COUNTER-PART (No. 25).</i>	
30. ENTRY AS AN ADVOCATE, VAKIL, OR ATTORNEY ON THE ROLL OF ANY HIGH COURT in exercise of powers conferred on such Court by Letters Patent or by the Legal Practitioners Act, 1884*—	
(a) in the case of an Advocate or Vakil ...	Five hundred rupees
(b) in the case of an Attorney ...	Two hundred and fifty rupees.
<i>Exemption.</i>	
Entry of an advocate, vakil, or attorney on the roll of any High Court when he has previously been enrolled in a High Court.	
† † †	
31 EXCHANGE OF PROPERTY.—Instrument of	The same as a Conveyance (No. 23) for a consideration equal to the value of the property of <i>greatest</i> value as set forth in such instrument.

* Act IX. of 1884.

† Here the entry "EQUITABLE MORTGAGE" is omitted by Act XV. of 1904, s. 8 (3).

but, if he mixes it up with the general mass of his property, the legacy is adeemed.

Illustration.

A bequeaths to B whatever sum may be received from his claim on C. A receives the whole of his claim on C, and sets it apart from the general mass of his property. The legacy is not adeemed.

150. Where a thing specifically bequeathed undergoes a

Change by operation of law of subject of specific bequest between date of will and testator's death. change between the date of the will and the testator's death, and the change takes place by operation of law, or in the course of execution of the provisions of any legal instrument under which the thing bequeathed was held, the legacy is not adeemed by reason of such change.

Illustrations.

A bequeaths to B "all the money which he has in the 5½ per cent loan of the Government of India." The securities for the 5½ per cent. loan are converted during A's lifetime into five per cent. stock

A bequeaths to B the sum of 2,000*l.* invested in consols in the names of trustees for A. The sum of 2,000*l.* is transferred by the trustees into A's own name :

A bequeaths to B the sum of 10,000 rupees in promissory notes of the Government of India, which he has power, under his marriage settlement, to dispose of by will. Afterwards, in A's lifetime, the fund is converted into consols by virtue of an authority contained in the settlement.

No one of these legacies has been adeemed.

151. Where a thing specifically bequeathed undergoes a

Charge of subject without testator's knowledge. change between the date of the will and the testator's death, and the change takes place without the knowledge or sanction of the testator, the legacy is not adeemed.

Illustration.

A bequeaths to B "all his three per cent consols." The consols are, without A's knowledge, sold by his agent, and the proceeds converted into East India Stock. This legacy is not adeemed.

Stock specifically bequeathed, lent to third party on condition that it be replaced.

152. Where stock, which has been specifically bequeathed, is lent to a third party on condition that it shall be replaced, and it is replaced accordingly, the legacy is not adeemed.

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
33. GIFT—Instrument of, <i>not being a SETTLEMENT (No 58) or Will or Transfer (No 62).</i>	The same duty as a Conveyance (No 23) for a consideration equal to the value of the property as set forth in such instrument.
HIRING AGREEMENT <i>or agreement for service</i> —See AGREEMENT (No 5).	
34. INDEMNITY-BOND ...	The same duty as a Security-bond (No 57) for the same amount
INSPECTORSHIP-DEED. — See COMPOSITION-DEED (No 22)	
INSURANCE—See POLICY OF INSURANCE (No. 47).	
35. LEASE, including an under-lease or sub-lease and any agreement to let or sublet—	
(a) where, by such lease, the rent is fixed, and no premium is paid or delivered—	
(i) where the lease purports to be for a term of less than one year,	The same duty as a Bond (No. 15) for the whole amount payable or deliverable under such lease.

Illustrations.

(a) A, having contracted in general terms for the purchase of a piece of land at a certain price, bequeaths it to B, and dies before he has paid the purchase money. The purchase money must be made good out of A's assets.

(b) A having contracted for the purchase of a piece of land for a certain sum of money, one-half of which is to be paid down and the other half secured by mortgage of the land, bequeaths it to B, and dies before he has paid or secured any part of the purchase-money. One-half of the purchase-money must be paid out of A's assets

156. Where there is a bequest of any interest in immoveable property, in respect of which payment in the nature of land-revenue or in the nature of rent, has to be made periodically, the estate of the testator shall (as between such estate and the legatee) make good such payments or a proportion of them up to the day of his death.

Illustration.

A bequeaths to B a house, in respect of which 365 rupees are payable annually by way of rent. A pays his rent at the usual time, and dies 25 days after. A's estate shall make good 25 rupees in respect of the rent.

157. In the absence of any direction in the will where there is a specific bequest of stock in a joint-stock company, if any call or other payment is due from the testator at the time of his death in respect of such stock, such call or payment shall, as between the testator's estate and the legatee, be borne by such estate; but, if any call or other payment shall, after the testator's death, become due in respect of such stock, the same shall, as between the testator's estate and the legatee, be borne by the legatee if he accept the bequest.

Illustrations.

(a) A bequeathed to B his shares in a certain railway. At A's death there was due from him the sum of 5*l.* in respect of each share, being the amount of a call which had been duly made, and the sum of 5*s.* in respect of each share, being the amount of interest which had accrued due in respect of the call. These payments must be borne by A's estate.

(b) A has agreed to take 50 shares in an intended joint-stock company, and has contracted to pay up 5*l.* in respect of each share, which sum must be paid before his title to the shares can be completed. A bequeaths these shares to B. The estate of A must make good the payments which were necessary to complete A's title.

(c) A bequeaths to B his shares in a certain railway. B accepts the legacy. After A's death, a call is made in respect of the shares. B must pay the call.

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY
<p>35. Lease—<i>contd.</i></p> <p>(c) where the lease is granted for a fine or premium <i>or for money advanced</i> in addition to rent reserved</p> <p><i>Exemptions.</i></p> <p>(a) Lease executed in the case of a cultivator, and for the purposes of cultivation (including a lease of trees for the production of food or drink) without the payment or delivery of any fine or premium, when a definite term is expressed, and such term does not exceed one year, or when the average annual rent reserved does not exceed one hundred rupees;</p>	<p>The same duty as a Conveyance (No. 23) for a consideration equal to the amount or value of such fine or premium <i>or advance</i> as set forth in the lease, in addition to the duty which would have been payable on such lease if no fine or premium <i>or advance</i> had been paid or delivered</p> <p>Provided that, in <i>any case</i> when an agreement to lease is stamped with the <i>ad-valorem</i> stamp required for a lease, and a lease in pursuance of such agreement is subsequently executed, the duty on such lease shall not exceed eight annas.</p>

those securities B is entitled to A's five per cent. promissory notes of the Government of India.

(b) A bequeaths the interest of his 5½ per cent. promissory notes of the Government of India to B for his life, and after his death to C. B is entitled to the interest of the notes during his life, and C is entitled to the notes upon B's death.

(c) A bequeaths to B the rents of his lands at X. B is entitled to the lands.

PART XXV.*

OF BEQUESTS OF ANNUITIES.

160 Where an annuity is created by will, the legatee is entitled to receive it for his life only unless a contrary intention appears by the will. And this rule shall not be varied by the circumstance that the annuity is directed to be paid out of the property generally, or that a sum of money is bequeathed to be invested in the purchase of it.

Illustrations.

(a) A bequeaths to B 500 rupees a year. B is entitled, during his life, to receive the annual sum of 500 rupees.

(b) A bequeaths to B the sum of 500 rupees monthly. B is entitled during his life to receive the sum of 500 rupees every month.

(c) A bequeaths an annuity of 500 rupees to B for life, and, on B's death, to C. B is entitled to an annuity of 500 rupees during his life. C, if he survives B, is entitled to an annuity of 500 rupees from B's death until his own death.

161. Where the will directs that an annuity shall be provided for any person out of the proceeds of property, or out of property generally, or where money is bequeathed to be invested in the purchase of any annuity for any person on the testator's death, the legacy vests in interest in the legatee, and he is entitled, at his option, to have an annuity purchased for him, or to receive the money appropriated for that purpose by the will.

* Part XXV applies to the wills of Hindus, Jains, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay.—See the Hindu Wills Act (XXI. of 1870), s. 2.

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT	PROPER STAMP-DUTY.
39 MEMORANDUM OF ASSOCIATION OF A COMPANY—	
(a) <i>if accompanied by Articles of Association under section 37 of the Indian Companies Act, 1882*</i>	Fifteen rupees.
(b) <i>if not so accompanied</i>	Forty rupees.
<i>Exemption</i>	
<i>Memorandum of any Association not formed for profit, and registered under section 26 of the Indian Companies Act, 1882*</i>	
40 MORTGAGE-DEED, not being "an AGREEMENT RELATING TO DEPOSIT OF TITLE-DEEDS, PAWN OR PLEDGE (No 6)"† BOTTOMRY BOND (No 16) MORTGAGE OF A CROP (No 41), RESPONDENTIA BOND (No 56), or SECURITY BOND (No 57)—	
(a) <i>when possession of the property or any part of the property comprised in such deed is given by the mortgagor or agreed to be given</i>	The same duty as a Conveyance (No. 23) for a consideration equal to the amount secured by such deed
(b) <i>when‡ possession is not given or agreed to be given as aforesaid,</i>	The same duty as a Bond (No. 15) for the amount secured by such deed.

* Act VI of 1882

† The words quoted are substituted for the words "*an Agreement to Mortgage*" by Act XV. of 1904, s 8 (4)‡ Here the words "*at the time of execution*" are omitted by Act XV. of 1904, *ibid*

Illustration.

A, by articles entered into in contemplation of his marriage with B, covenanted that he would pay to each of the daughters of the intended marriage a portion of 20,000 rupees on her marriage. This covenant having been broken, A bequeaths 20,000 rupees to each of the married daughters of himself and B. The legatees are entitled to the benefit of this bequest in addition to their portions

166. No bequest shall be wholly or partially adeemed by a
 No ademption by subse- subsequent provision made by settle-
 quent provision for legatee ment or otherwise for the legatee.

Illustrations.

(a) A bequeaths 20,000 rupees to his son B. He afterwards gives to B the sum of 20,000 rupees. The legacy is not thereby adeemed.

(b.) A bequeaths 40,000 rupees to B, his orphan niece whom he had brought up from her infancy. Afterwards, on the occasion of B's marriage, A settles upon her the sum of 30,000 rupees. The legacy is not thereby diminished.

PART XXVII.*

OF ELECTION.

167. Where a man, by his will, professes to dispose of something which he has no right to dispose of, the person to whom the thing belongs shall elect either to confirm such disposition, or to dissent from it; and, in the latter case, he shall give up any benefits which may have been provided for him by the will.

168. The interest so relinquished shall devolve as if it had not been disposed of by the will in favour of the legatee, subject, nevertheless, to the charge of making good to the disappointed legatee the amount or value of the gift attempted to be given to him by the will.

169. This rule will apply whether the testator does or does not believe that which he professes to dispose of by his will to be his own.

* Part XXVII. applies to the wills of Hindus, Jains, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay.—See the Hindu Wills Act (XXI. of 1870), s. 2.

Person taking in individual capacity under will may, in other character, elect to take in opposition

172. A person who, in his individual capacity, takes a benefit under the will, may, in another character, elect to take in opposition to the will.

Illustration

The estate of Sultanpur is settled upon A for life, and after his death upon B. A leaves the estate of Sultanpur to D, and 2,000 rupees to B, and 1,000 rupees to C, who is B's only child. B dies intestate shortly after the testator, without having made an election. C takes out administration to B, and as administrator elects to keep the estate of Sultanpur in opposition to the will, and to relinquish the legacy of 2,000 rupees. C may do this, and yet claim his legacy of 1,000 rupees under the will.

Exception to the six last rules.—Where a particular gift is expressed in the will to be in lieu of something belonging to the legatee, which is also in terms disposed of by the will, if the legatee claims that thing, he must relinquish the particular gift, but he is not bound to relinquish any other benefit given to him by the will.

Illustration

Under A's marriage-settlement his wife is entitled, if she survives him, to the enjoyment of the estate of Sultanpur during her life. A, by his will, bequeaths to his wife an annuity of 200*l* during her life, in lieu of her interest in the estate of Sultanpur, which estate he bequeaths to his son. He also gives his wife a legacy of 1,000*l*. The widow elects to take what she is entitled to under the settlement. She is bound to relinquish the annuity, but not the legacy of 1,000*l*.

173. Acceptance of a benefit given by the will constitutes an election by the legatee to take under the will if he has knowledge of his right to elect, and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he waives inquiry into the circumstances.

Illustrations.

(a) A is owner of an estate called Sultanpur Khurd, and has a life-interest in another estate called Sultanpur Buzurg, to which, upon his death, his son B will be absolutely entitled. The will of A gives the estate of Sultanpur Khurd to B, and the estate of Sultanpur Buzurg to C. B in ignorance of his own right to the estate of Sultanpur Buzurg, allows C to take possession of it, and enters into possession of the estate of Sultanpur Khurd. B has not confirmed the bequest of Sultanpur Buzurg to C.

(b) B, the eldest son of A, is the possessor of an estate called Sultanpur. A bequeaths Sultanpur to C, and to B the residue of A's property. B

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT	PROPER STAMP-DUTY.
45 PARTITION— <i>Instrument of [as defined by s. 2 (15)]</i> ...	The same duty as a Bond (No 15) for the amount of the value of the separated share or shares of the property.
<i>N. B.—The largest share remaining after the property is partitioned (or, if there are two or more shares of equal value, and not smaller than any of the other shares, then one of such equal shares) shall be deemed to be that from which the other shares are separated</i>	
<i>Provided always that—</i>	
<i>(a) when an instrument of partition containing an agreement to divide property in severalty is executed and a partition is effected in pursuance of such agreement, the duty chargeable upon the instrument effecting such partition shall be reduced by the amount of duty paid in respect of the first instrument, but shall not be less than eight annas,</i>	
<i>(b) where land is held on Revenue Settlement for a period not exceeding thirty years and paying the full assessment, the value for the purpose of duty shall be calculated at not more than five times the annual revenue,</i>	
<i>(c) where a final order for effecting a partition passed by any Revenue authority or any Civil Court, or an award by an arbitrator directing a partition, is stamped with the stamp required for an instrument of partition, and an instrument of partition in pursuance of such order or award is subsequently executed, the duty on such instrument shall not exceed eight annas</i>	

PART XXVIII.*

OF GIFTS IN CONTEMPLATION OF DEATH.

Property transferable by gift made in contemplation of death.

178. A man may dispose, by gift made in contemplation of death, of any moveable property which he could dispose of by will.

A gift is said to be made in contemplation of death where a man, who is ill, and expects to die shortly of his illness, delivers to another the possession of any moveable property to keep as a gift in case the donor shall die of that illness.

Such gift resumable.

Such a gift may be resumed by the giver.

It does not take effect if he recovers from the illness during which it was made; nor if he survives the person to whom it was made.

When it fails.

1
Illustrations.

(a) A, being ill, and in expectation of death, delivers to B to be retained by him in case of A's death—

a watch,
a bond granted by C to A,
a bank-note;
a promissory note of the Government of India endorsed in blank,
a bill of exchange endorsed in blank,
certain mortgage-deeds;

A dies of the illness during which he delivered these articles.

B is entitled to—

the watch,
the debt secured by C's bond,
the bank-note,
the promissory note of the Government of India,
the bill of exchange,
the money secured by the mortgage-deeds

(b.) A, being ill, and in expectation of death, delivers to B the key of a trunk, or the key of a warehouse in which goods of bulk belonging to A are deposited, with the intention of giving him the control over the contents of the trunk, or over the deposited goods, and desires him to keep them in case

* This Part does not apply to Hindus.—See the Hindu Wills Act (XXI. of 1870).

SCHEDULE I.—*continued.*

	If drawn singly.	If drawn in duplicate, for each part.
47. POLICY OF INSURANCE— <i>contd.</i>		
(ii) in any other case, in respect of every full sum of one thousand rupees and also any fractional part of one thousand rupees insured by the policy,	Two annas.	One anna
(2) for time—		
(iii) in respect of every full sum of one thousand rupees and also any fractional part of one thousand rupees insured by the policy—		
where the insurance shall be made for any time not exceeding six months,	Two annas	One anna
where the insurance shall be made for any time exceeding six months and not exceeding twelve months.	Four annas	Two annas
"B.*—FIRE INSURANCE—		
(1) in respect of an original policy—		
(i) when the sum insured does not exceed Rs 5,000,	Eight annas	
(ii) in any other case,	One rupee	
and (2) in respect of each receipt for any payment of a premium on any renewal of an original policy.	One-half of the duty payable in respect of the original policy in addition to the amount, if any, chargeable under No. 53."	

* In Article 47, divisions A and B have been substituted for the original by Act V. of 1906, s. 7 (3).

Illustrations.

(a) A wills that C be his executor if B will not. B is appointed executor by implication

(b.) A gives a legacy to B and several legacies to other persons, among the rest to his daughter-in-law,* C, and adds, "but, should the within-named C be not living, I do constitute and appoint B my whole and sole executrix" C is appointed executrix by implication.

(c.) A appoints several persons executors of his will and codicils, and his nephew residuary legatee, and in another codicil are these words: "I appoint my nephew my residuary legatee to discharge all lawful demands against my will and codicils, signed of different dates" The nephew is appointed an executor by implication

183. Probate cannot be granted to any person who is a minor

Persons to whom probate cannot be granted. or is of unsound mind, nor to a married woman without the previous consent of her husband.

Grant of probate to several executors simultaneously, or at different times

184. When several executors are appointed, probate may be granted to them all simultaneously, or at different times

Illustration

A is an executor of B's will by express appointment and C an executor of it by implication Probate may be granted to A and C at the same time, or to A first and then to C, or to C first and then to A.

185. If a codicil be discovered after the grant of probate, a separate probate of that codicil may be granted to the executor if it in no way repeals the appointment of executors made by the will.

If different executors are appointed by the codicil, the probate of the will must be revoked, and a new probate granted of the will and the codicil together

186. When probate has been granted to several executors, Accrual of representation and one of them dies, the entire representation of the testator accrues to the surviving executor or executors.

* See s. 6, Act XXI of 1870 (the Hindu Wills Act)

SCHEDULE I:—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
47. POLICY OF INSURANCE <i>—concltd.</i>	
<p>(ii) if drawn in duplicate, for each part </p>	<p>Three annas</p>
<p style="text-align: center;"><i>Exemption</i></p> <p><i>Policies of life-insurance granted by the Director-General of the Post Office of India in accordance with rules for Postal Life Insurance issued under the authority of the Government of India.</i></p>	
<p>E.—RE-INSURANCE BY AN INSURANCE COMPANY, which has granted a POLICY OF SEA-INSURANCE, or a POLICY OF FIRE INSURANCE, with another Company by way of indemnity or guarantee against the payment on the original insurance of a certain part of the sum insured thereby.</p>	<p>One-quarter of the duty payable in respect of the original insurance, but not less than one anna or more than one rupee.</p>
<p style="text-align: center;"><i>General Exemption.</i></p> <p>(a) Letter of cover or engagement to issue a policy of insurance</p> <p>Provided that, unless such letter or engagement bears the stamp prescribed by this Act for such policy, nothing shall be claimable thereunder, nor shall it be available for any purpose, except to compel the delivery of the policy therein mentioned.</p>	

193. When a person appointed an executor has not renounced the executorship, letters of administration shall not be granted to any other person until a citation has been issued calling upon the executor to accept or renounce his executorship; except that, when one or more of several executors have proved a will, the Court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved.

194. The renunciation may be made orally in the presence of the Judge, or by a writing signed by the person renouncing, and, when made, shall preclude him from ever thereafter applying for probate of the will appointing him executor.

195. If the executor renounce, or fail to accept, the executorship within the time limited for the acceptance or refusal thereof, the will may be proved, and letters of administration with a copy of the will annexed may be granted to the person who would be entitled to administration in case of intestacy.*

196. When the deceased has made a will, but has not appointed an executor; or

when he has appointed an executor who is legally incapable, or refuses to act, or has died before the testator, or before he has proved the will; or

when the executor dies after having proved the will, but before he has administered all the estate of the deceased,†

an universal or a residuary legatee may be admitted to prove the will, and letters of administration with the will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered.

197. When a residuary legatee who has a beneficial interest survives the testator, but dies before the estate has been fully administered, his representative has the same right to administration with the will annexed as such residuary legatee.

* See s. 6, Act XXI. of 1870.

† 12 B. L. R. 423, 427.

SCHEDULE I.—continued.

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
48. POWERS-OF-ATTORNEY — <i>contd</i>	
(f) <i>when given for consideration, and authorizing the attorney to sell any immovable property :</i>	<i>The same duty as a Conveyance (No 23) for the amount of the consideration.</i>
(g) <i>in any other case</i>	One rupee for each person authorized. N B.—The term " registration " includes every, operation incidental to registration under the Indian Registration Act 1877.*
<i>Explanation</i> —For the purposes of this article more persons than one, when belonging to the same firm, shall be deemed to be one person	
49. PROMISSORY NOTE [<i>as defined by section 2 (22)]—</i>	
	<i>The same duty as a Bill of exchange (No 13) according as it is payable on demand or payable otherwise than on demand, as the case may be.</i>
50. PROTEST OF BILL OR NOTE that is to say, any declaration in writing made by a Notary Public, or other person lawfully acting as such attesting the dishonour of a bill of exchange or promissory note ...	One rupee.

* Act III. of 1877.

who would be beneficially entitled to the estate according to the rules for the distribution of an intestate's estate:

Provided that, when the mother of the deceased shall be one of the class of persons so entitled, she shall be solely entitled to administration.

204. Those who stand in equal degree of kindred to the deceased are equally entitled to administration.*

205. The husband, surviving his wife, has the same right of administration of her estate as the widow has in respect of the estate of her husband.

206. When there is no person connected with the deceased by marriage or consanguinity who is entitled to letters of administration, and willing to act, they may be granted to a creditor.

207. Where the deceased has left property in British India, letters of administration must be granted according to the foregoing rules, although he may have been a domiciled inhabitant of a country in which the law relating to testate and intestate succession differs from the law of British India.

PART XXX.†

OF LIMITED GRANTS.

(a.)—*Grants limited in Duration.*

208. When the will has been lost or mislaid since the testator's death, or has been destroyed by wrong or accident, and not by any act of the testator, and a copy or the draft of the will has been preserved, probate may be granted of such copy or draft, limited until the original or a properly authenticated copy of it be produced.

* Ben. Short Notes of Cases, III

† Compare Act V. of 1881, Ch. III., with sub-parts (a) to (f).

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
<p>53. RECEIPT—<i>contd.</i></p> <p><i>Exemptions.</i></p> <p>Receipt—</p> <p>(a) endorsed on or contained in any instrument duly stamped, or exempted under <i>the proviso to s 3 (instruments executed on behalf of the Government)</i> acknowledging the receipt of the consideration-m o n e y therein expressed, or the receipt of any principal money, interest or annuity, or other periodical payment thereby secured,</p> <p>(b) for any payment of money without consideration,</p> <p>(c) for any payment of rent by a cultivator on account of land assessed to Government revenue, or (in the Presidencies of Fort St George and Bombay) of inam lands,</p> <p>(d) for pay or allowances by non-commissioned officers or soldiers of Her Majesty's Army or Her Majesty's Indian Army, when serving in such capacity, or by mounted police-constables,</p>	

215. When a minor is sole executor or sole residuary legatee, Administration during letters of administration, with the will minority of sole executor or annexed, may be granted to the legal residuary legatee. guardian of such minor, or to such other person as the Court shall think fit until the minor shall have completed the age of eighteen years, at which period, and not before, probate of the will shall be granted to him.

216. When there are two or more minor executors, and no executor who has attained majority, or Administration during minority of several executors or residuary legatees two or more residuary legatees, and no residuary legatee who has attained majority, the grant shall be limited until one of them shall have completed the age of eighteen years

217 If a sole executor or a sole universal or residuary legatee, Administration for use or a person who would be solely entitled and benefit of lunatic *ius* to the estate or the intestate according *abens*. to the rule* for the distribution of intestates' estates, be a lunatic, letters of administration, with or without the will annexed, as the case may be, shall be granted to the person to whom the care of his estate has been committed by competent authority, or, if there be no such person, to such other person as the Court may think fit to appoint, for the use and benefit of the lunatic until he shall become of sound mind.

218. Pending any suit touching the validity of the will of a deceased person, or for obtaining or revoking any probate or any grant of letters of administration, the Court may appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator, other than the right of distributing such estate, and every such administrator shall be subject to the immediate control of the Court, and shall act under its direction.

(c)—*For Special Purposes.*

219 If an executor be appointed for any limited purpose, Probate limited to purpose specified in the will, the probate shall be limited to that purpose, and, if he should point an attorney to take administration on his behalf, the letters of administration, with the will annexed, shall accordingly be granted.

* *Sic*, read *rules*.

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
<p>53. RECEIPT—concl'd.</p> <p><i>Exemptions—concl'd.</i></p> <p>Provided also that this exemption shall not extend to a receipt or acknowledgment for any sum paid or deposited for or upon a letter of allotment of a share, or in respect of a call upon any scrip or share of or in any <i>incorporated</i> Company or <i>other body corporate</i> or <i>such</i> proposed or intended Company or <i>body</i>, or in respect of a <i>debenture being a marketable security.</i></p> <p>" See also POLICY OF INSURANCE [No 47-B (2)] " *</p>	
<p>54 RE-CONVEYANCE OF MORTGAGED PROPERTY—</p> <p>(a) if the consideration for which the property was mortgaged does not exceed Rs. 1,000.</p> <p>(b) in any other case</p>	<p>The same duty as a Conveyance (No. 23) for the amount of such consideration as set forth in the Re-conveyance.</p> <p>Ten rupees.</p>
<p>55. RELEASE, that is to say, any instrument " (not being such a release as is provided for by section 23A) " † whereby a person renounces a claim upon another person or against any specified property—</p>	

* This note is added to Article 53 by Act V. of 1906, s. 7 (1).

† This parenthesis is inserted by Act XV. of 1901, s. 8 (7).

deceased, and giving discharges for debts due to his estate, subject to the directions of the Court.

225. When a person has died intestate, or leaving a will of

Appointment, as administrator, of person other than one who, under ordinary circumstances, would be entitled to administration

which there is no executor willing and competent to act, or where the executor shall, at the time of the death of such person, be resident out of the province, and it shall appear to the Court to be necessary or convenient to appoint some person to administer the estate or any part thereof, other than the person who, under ordinary circumstances, would be entitled to a grant of administration, it shall be lawful for the Judge, in his discretion, having regard to consanguinity, amount of interest, the safety of the estate, and probability that it will be properly administered, to appoint such person as he shall think fit to be administrator,

and in every such case letters of administration may be limited or not as the Judge shall think fit.

(d.)—Grants with Exception.

226. Whenever the nature of the case requires that an excep-

Probate or administration with will annexed, subject to exception

tion be made, probate of a will or letters of administration with the will annexed shall be granted subject to such exception.

227. Whenever the nature of the case requires that an excep-

Administration with exception

tion be made, letters of administration shall be granted subject to such exception.

(e.)—Grants of the Rest.

228. Whenever a grant, with exception, of probate or letters

Probate or administration of administration, with or without the will annexed, has been made, the person entitled to probate or administration of the remainder of the deceased's estate may take a grant of probate or letters of administration, as the case may be, of the rest of the deceased's estate.

(f.)—Grants of Effects unadministered.

229. If the executor to whom probate has been granted have

Grant of effects unadministered

died, leaving a part of the testator's estate unadministered, a new represen-

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY
<p>57. SECURITY BOND OR MORTGAGE-DEED—<i>contd.</i></p> <p><i>Exemptions.</i></p> <p>Bond or other instrument, when executed—</p> <p>(a) by headmen nominated under rules framed in accordance with the Bengal <i>Irrigation Act, 1876</i>,* section 99, for the due performance of their duties under that Act,</p> <p>(b) by any person for the purpose of guaranteeing that the local income derived from private subscriptions to a charitable dispensary or hospital or any other object of public utility shall not be less than a specified sum per mensem,</p> <p>(c) under No. 3-A of the rules made by the Governor of Bombay in Council under section 70 of the <i>Bombay Irrigation Act, 1879</i>,†</p> <p>(d) executed by persons taking advances under the Land Improvement Loans Act 1883,‡ or the <i>Agriculturists' Loans Act, 1884</i>,§ or by their sureties, as security for the repayment of such advances;</p>	

* Ben Act III. of 1876

† Bom. Act V. of 1879.

‡ Act XIX. of 1883.

§ Act XII. of 1884.

and, that the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case ;

3rd, that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently ;

4th, that the grant has become useless and inoperative through circumstances ;

**5th*, that the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Part XXXIV. of this Act, or has exhibited under that Part an inventory or account which is untrue in a material respect.

Illustrations.

(a.) The Court by which the grant was made had no jurisdiction.

(b.) The grant was made without citing parties who ought to have been cited

(c.) The will of which probate was obtained was forged or revoked.

(d.) A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.

(e.) A has taken administration to the estate of B as if he had died intestate, but a will has since been discovered.

(f.) Since probate was granted, a later will has been discovered.

(g.) Since probate was granted, a codicil has been discovered, which revokes or adds to the appointment of executors under the will

(h.) The person to whom probate was, or letters of administration were, granted has subsequently become or unsound mind.

PART XXXI.†

OF THE PRACTICE IN GRANTING AND REVOKING PROBATES AND LETTERS OF ADMINISTRATION.

235. The District Judge shall have jurisdiction in granting and revoking‡ probates and letters of administration in all cases within his district.

* Cl. 5 has been added by Act VI. of 1889, s. 2.

† Compare the Probate and Administration Act (V. of 1881), Ch. V.

‡ See 2 N.-W. P. 268.

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
58. SETTLEMENT—<i>contd.</i>	
<i>Exemptions—contd.</i>	
B—REVOCATION OF—	<i>The same duty as a Bond (No for a sum equal to the amo or value of the property conce ed as set forth in the Instrum of Revocation, but not exceed ten rupees</i>
<i>See also TRUST (No. 64).</i>	
59 SHARE WARRANTS to bear or issued under the Indian Companies Act, 1882.*	<i>Three-quarters of the duty 1 able on a Conveyance (No for a consideration equal to nominal amount of the shi specified in the warrant.</i>
<i>Exemption.</i>	
<i>Share-warrant when issued by a Com-pany in pursuance of the Indian Companies Act, 1882,* section 50, to have effect only upon payment, as composition for that duty, to the Collector of Stamp-revenue, of—</i>	
<i>(a) three quarters per centum of the whole subscribed capital of the Company, or</i>	
<i>(b) if any Company, which has paid the said duty or composition in full, subsequently issues an addition to its subscribed capital — three quarters per centum of the additional capital so issued.</i>	
SCRIP.— <i>See CERTIFICATE (No 19)</i>	

* Act VI. of 1882.

238. The proceedings of the Court of the District Judge in relation to the granting of probate and letters of administration shall, except as hereinafter otherwise provided, be regulated, so far as the circumstances of the case will admit, by the Code of Civil Procedure.*

239. Until probate be granted of the will of a deceased person or an administrator of his estate When and how District Judge to interfere for protection of property, be constituted, the District Judge, within whose jurisdiction any part of the property of the deceased person is situate, is authorized and required to interfere for the protection of such property at the instance of any person claiming to be interested therein, and in all other cases where the Judge considers that the property incurs any risk of loss or damage; and for that purpose, if he shall see fit, to appoint an officer to take and keep possession of the property.†

240. Probate of the will or letters of administration to the estate of a deceased person may be granted by the District Judge under the seal of his Court if it shall appear by a petition, verified as hereinafter, mentioned of the person applying for the same, that the testator or intestate, as the case may be, at the time of his decease, had a fixed place of abode, or any property, moveable or immovable, within the jurisdiction of the Judge.

241. When the application is made to the Judge of a District in which the deceased had no fixed abode at the time of his death, it shall be in the discretion of the Judge to refuse the application if, in his judgment, it could be disposed of more justly or conveniently in another district, or, where the application is for letters of administration, to grant them absolutely or limited to the property within his own jurisdiction.

* This reference to Act VIII. of 1859 should now be read as applying to Act V of 1908—See s 158 of the latter Act

† As to the duty of the District Judge to take charge of property in certain cases, and report to the Administrator-General, and his power to pay certain expenses out of the property, see Act II, 1874

S 239 does not apply to any part of the property of a Native Christian.—See Act VII. of 1901.

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
62. TRANSFER— <i>contd.</i>	
(e) of any trust-property without consideration from one trustee to another trustee or from a trustee to a beneficiary	Five rupees or such smaller amount as may be chargeable under clauses (a) to (c) of this article.
<i>Exemptions</i>	
Transfers by endorsement—	
(a) of a bill of exchange, cheque, or promissory note,	
(b) of a bill of lading, <i>delivery order</i> , <i>warrant for goods</i> , or other <i>mercantile document of title to goods</i> ;	
(c) of a policy of insurance,	
(d) of securities of the Government of India	
<i>See also section 8.</i>	
63. TRANSFER OF LEASE by way of assignment, and not by way of under-lease.	The same duty as a Conveyance (No 23) for a consideration equal to the amount of the consideration for the Transfer.
<i>Exemption.</i>	
<i>Transfer of any lease exempt from duty.</i>	
64. TRUST—	
A—DECLARATION OF—of or concerning any property when made by any writing not being a WILL.	The same duty as a Bond (No 19) for a sum equal to the amount or value of the property concerned as set forth in the instrument, but not exceeding ten rupees.

242A.* (1) Where probate or letters of administration has or have been granted by a High Court or District Judge with the effect referred to in the proviso to section 242, the High Court or District Judge shall send a certificate thereof to the following Courts, namely:—

(a) when the grant has been made by a High Court, to each of the other High Courts,

(b) when the grant has been made by a District Judge, to the High Court to which such District Judge is subordinate, and to each of the other High Courts.

(2) Every certificate referred to in sub-section (1) shall be to the following effect, namely:—

'I, A. B., Registrar [or as the case may be] of the High Court of Judicature at [or as the case may be], hereby certify that on the day of [or as the case may be], the High Court of Judicature at [or as the case may be], granted probate of the will [or letters of administration of the estate] of C. D., late of [or as the case may be], deceased, to E. F. of [or as the case may be] and G. H. of [or as the case may be], and that such probate [or letters] has [or have] effect over all the property of the deceased throughout the whole of British India;'

and such certificate shall be filed by the High Court receiving the same.

(3) Where any portion of the assets has been stated by the petitioner, as hereinafter provided in sections 244 and 246, to be situate within the jurisdiction of a District Judge in another Province, the Court required to send the certificate referred to in sub-section (1) shall send a copy thereof to such District Judge, and such copy shall be filed by the District Judge receiving the same.

243. The application for probate or letters of administration, if made and verified in the manner hereinafter mentioned, shall be conclusive for the purpose of authorizing the grant of probate or administration;

and no such grant shall be impeached by reason that the testator or intestate had no fixed place of abode, or no property

* S 242A has been inserted by Act VIII. of 1903.

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"I (A. B.) do declare that I read and perfectly understand the language and character of the original, and that the above is a true and accurate translation thereof."

246. Applications for letters of administration shall be made by petition distinctly written as aforesaid, and stating*—

- the time and place of the deceased's death,
- the family or other relatives of the deceased, and their respective residences,
- the right in which the petitioner claims,
- that the deceased left some property within the jurisdiction of the District Judge "or District Delegate"† to whom the application is made, and
- the amount of assets which are likely to come to the petitioner's hands;

and, when the application is to a District Delegate, the petitioner shall further state that the deceased, at the time of his death, resided within the jurisdiction of such Delegate.

§ Where the application is to the District Judge, and any portion of the assets likely to come to the petitioner's hands is situate in another Province, the petition shall further state the amount of such assets in each Province, and the District Judges within whose jurisdiction such assets are situate.

246A.|| (1) Every person applying to any of the Courts men-

tioned in the proviso to section 242 for probate of a will or letters of administration of an estate intended to have effect throughout British India, shall state in his petition in addition to the matters respectively required by section 244 and section 246 of this Act, that, to the best of his belief, no application has been made to any other Court for a probate of the same will or for letters of administration of the same estate, intended to have such effect as last aforesaid,

* As to the particulars to be stated where the Administrator-General applies for letters of administration, see Act II. of 1874, s. 16.

† The words quoted have been inserted by Act VI. of 1881, s. 9.

‡ This paragraph has been added by Act VI of 1881, s. 4.

§ This paragraph has been inserted by Act VIII. of 1903, s. 2 (4).

|| S 246A has been inserted by Act VIII. of 1903, s. 2 (5).

SECTIONS.

28. Where intestate has left no widow, and where he has left no kindred.

PART V.

OF THE DISTRIBUTION OF AN
INTESTATE'S PROPERTY—*(a)—Where he has left Lineal
Descendants*

29. Rules of distribution —
30. Where intestate has left child or children only.
31. Where intestate has left no child, but grandchild or grandchildren
32. Where intestate has left only great-grandchildren or remoter lineal descendants
33. Where intestate leaves lineal descendants not all in same degree of kindred to him, and those through whom the more remote descend are dead.

*(b)—Where the Intestate has left
no Lineal Descendants :*

34. Rules of distribution where intestate has left no lineal descendants:
35. Where intestate's father living:
36. Where intestate's father dead, but his mother, brothers, and sisters living:
37. Where intestate's father dead, and his mother, a brother or sister, and children of any deceased brother or sister living:
38. Where intestate's father dead, and his mother and children of any deceased brother or sister living:
39. Where intestate's father dead, but his mother living, and no brother, sister, nephew, or niece:

SECTIONS

40. Where intestate has left neither lineal descendant, nor father, nor mother:
41. Where intestate has left neither lineal descendant, nor parent, nor brother, nor sister.
42. Children's advancements not to be brought into hotchpot

PART VI.

OF THE EFFECT OF MARRIAGE AND
MARRIAGE-SETTLEMENTS ON
PROPERTY

43. Rights of widower and widow respectively
44. Effect of marriage between person domiciled, and one not domiciled, in British India.
45. Settlement of minor's property in contemplation of marriage.

PART VII.

OF WILLS AND CODICILS.

46. Persons capable of making wills.
47. Testamentary guardian
48. Will obtained by fraud, coercion, or importunity.
49 Will may be revoked or altered.

PART VIII.

OF THE EXECUTION OF UNPRIVILEGED WILLS.

50. Execution of unprivileged wills.
51. Incorporation of papers by reference

PART IX.

OF PRIVILEGED WILLS.

52. Privileged will.
53. Mode of making, and rules for executing, privileged wills.

to issue citations calling upon all persons claiming to have and issue citations to in- any interest in the estate of the deceased spect proceedings. to come and see the proceedings before the grant of probate or letters of administration.

The citation shall be fixed up in some conspicuous part of the Court-house, and also in the office of the Collector of the District, and otherwise published or made known in such manner as the Judge "or District Delegate"† issuing the same may direct.

† Where any portion of the assets has been stated by the petitioner to be situate within the jurisdiction of a District Judge in another Province, the District Judge issuing the same shall cause a copy of the citation to be sent to such other District Judge, who shall publish the same in the same manner as if it were a citation issued by himself, and shall certify such publication to the District Judge who issued the citation.

251. Caveats against the grant of probate or administration may be lodged with the District Judge or a District Delegate; and, immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge; and, immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased resided at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same.

Form of caveat.

252. The caveat shall be to the following effect:—

"Let nothing be done in the matter of the estate of *A. B.*, late of , deceased, who died on the day of at , without notice to *C. D.*, of ."

* The words quoted have been inserted by Act VI. of 1881, s. 9

† This paragraph has been inserted by Act VIII. of 1903, s. 2 (d)

‡ S. 251 has been substituted for the one originally enacted by Act VI. of 1881, s. 5.

SECTIONS.

- 95. When lapsed share goes as undisposed of.
- 96. When bequest to testator's child or lineal descendant does not lapse on his death in testator's lifetime.
- 97. Bequest to A for benefit of B does not lapse by A's death.
- 98. Survivorship in case of bequest to described class

PART XII

OF VOID BEQUESTS.

- 99. Bequest to person by particular description, who is not in existence at testator's death.
- 100. Bequest to person not in existence at testator's death, subject to prior bequest
- 101. Rule against perpetuity.
- 102. Bequest to a class, some of whom may come under rules in sections 100 and 101.
- 103. Bequest to take effect on failure of bequest void under section 100, 101, or 102.
- 104. Effect of direction for accumulation.
- 105. Bequest to religious or charitable uses

PART XIII.

OF THE VESTING OF LEGACIES.

- 106. Date of vesting of legacy when payment or possession postponed.
- 107. Date of vesting when legacy contingent upon specified uncertain event.
- 108. Vesting of interest in bequest to such members of a class as shall have attained particular age.

PART XIV.

OF ONEROUS BEQUESTS

- 109. Onerous bequest.

SECTIONS.

- 110. One of two separate and independent bequests to some person may be accepted, and the other refused.

PART XV.

OF CONTINGENT BEQUESTS

- 111. Bequest contingent upon specified uncertain event no time being mentioned for its occurrence.
- 112. Bequest to such of certain persons as shall be surviving at some period not specified.

PART XVI.

OF CONDITIONAL BEQUESTS.

- 113. Bequest upon impossible condition
- 114. Bequest upon illegal or immoral condition
- 115. Fulfilment of condition precedent to vesting of legacy
- 116. Bequest to A and, on failure of prior bequest, to B.
- 117. When second bequest not to take effect on failure of first.
- 118. Bequest over, conditional upon happening or not happening of specified uncertain event.
- 119. Condition must be strictly fulfilled
- 120. Original bequest not affected by invalidity of second.
- 121. Bequest conditioned that it shall cease to have effect in case specified uncertain event shall happen or not happen
- 122. Such condition must not be invalid under section 107.
- 123. Result of legatee rendering impossible or indefinitely postponing act for which no time specified, and, on non-performance of which, subject-matter to go over.

that the same may be presented to the District Judge, unless the District Delegate think it necessary, for the purposes of Justice, to impound the same, which he is hereby authorized to do, and in that case the same shall be sent by him to the District Judge.

254. When it shall appear to the Judge "or District Delegate" that probate of a will should be granted, he will grant the same under the seal of his Court in a manner following:—

"I, _____, Judge of the District of _____, [or Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*)], hereby make known that, on the _____ day of _____ in the year _____, the last will of _____, late of _____, a copy whereof is hereunto annexed, was proved and registered before me, and that administration of the property and credits of the said deceased, and in any way concerning his will, was granted to _____, the executor in the said will named [he having undertaken to administer the same, and to make a full and true inventory of the said property and credits, and exhibit the same to this Court within six months from the date of this grant, or within such further time as the Court may from time to time appoint, and also to render to this Court a true account of the said property and credits within one year from the same date, or within such further time as the Court may from time to time appoint."†

255. And, wherever it shall appear to the District Judge "or District Delegate" that letters of administration to the estate of a person deceased, with or without a copy of the will annexed, should be granted, he will grant the same under the seal of his Court in manner following.—

"I, _____, Judge of the District of _____, [or Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*)], hereby make known that, on the _____ day of _____ in the year _____, the last will of _____, late of _____, a copy whereof is hereunto annexed, was proved and registered before me, and that administration of the property and credits of the said deceased, and in any way concerning his will, was granted to _____, the executor in the said will named [he having undertaken to administer the same, and to make a full and true inventory of the said property and credits, and exhibit the same to this Court within six months from the date of this grant, or within such further time as the Court may from time to time appoint, and also to render to this Court a true account of the said property and credits within one year from the same date, or within such further time as the Court may from time to time appoint."†

* The words quoted in the first paragraphs of ss 254 & 255 have been inserted by Act VI of 1881, s. 9.

† In ss. 254 & 255, these words in brackets (with the brackets themselves) have been inserted by Act VI. of 1881, s. 8.

‡ These words in brackets from "he having" to the end of the section have been substituted by Act VI. of 1889, s. 4.

SECTIONS.

147. Non-ademption of specific bequest of goods described as connected with certain place by reason of removal
148. When removal of thing bequeathed does not constitute ademption
149. When thing bequeathed is a valuable to be received by testator from third person, and testator himself or his representative receives it.
150. Change by operation of law of subject of specific bequest between date of will and testator's death
151. Change of subject without testator's knowledge
152. Stock specifically bequeathed, lent to third party on condition that it be replaced.
153. Stock specifically bequeathed, sold, but replaced and belonging to testator at his death.

PART XXII

OF THE PAYMENT OF LIABILITIES
IN RESPECT OF THE SUBJECT
OF A BEQUEST.

154. Non-liability of executor to exonerate specific legatees
155. Completion of testator's title to things bequeathed to be at cost of his estate
156. Exoneration of legatee's immoveable property for which land-revenue or rent payable periodically.
157. Exoneration of specific legatee's stock in Joint Stock Company.

PART XXIII.

OF BEQUESTS OF THINGS DESCRIBED
IN GENERAL TERMS

158. Bequest of thing described in general terms.

SECTIONS.

PART XXIV.

OF BEQUESTS OF THE INTERESTS OR
PRODUCE OF A FUND.

159. Bequest of interest or produce of fund.

PART XXV.

OF BEQUESTS OF ANNUITIES.

160. Annuity created by will payable for life only unless contrary intention appears by will.
161. Period of vesting where will directs that annuity be provided out of proceeds of property, or out of property generally, or where money bequeathed to be invested in purchase of annuity
162. Abatement of annuity
163. Where gift of annuity and residuary gift, whole annuity to be first satisfied.

PART XXVI.

OF LEGACIES TO CREDITORS AND
PORTIONERS.

164. Creditor *prima facie* entitled to legacy as well as debt
165. Child *prima facie* entitled to legacy as well as portion
166. No ademption by subsequent provision for legatee.

PART XXVII.

OF ELECTION.

167. Circumstances in which election takes place.
168. Devolution of interest relinquished by owner
169. Testator's belief as to his ownership immaterial.
170. Bequest for man's benefit how regarded for purpose of election.
171. Person deriving benefit indirectly not put to election.

a certificate or of probate or letters of administration in respect of the estate of the deceased person, and if such previous grant is in force.

21. (1) A grant of probate or letters of administration under the Probate and Administration Act, 1881,* in respect of an estate, shall be deemed to supersede any certificate previously granted under this Act in respect of any debts or securities included in the estate.

(2) When, at the time of the grant of the probate or letters, any suit or other proceeding instituted by the holder of the certificate regarding any such debt or security is pending, the person to whom the grant is made shall, on applying to the Court in which the suit or proceeding is pending, be entitled to take the place of the holder of the certificate in the suit or proceeding.

22 Where a certificate under this Act has been superseded or is invalid by reason of the certificate having been revoked under section 18, or by reason of the grant of a certificate to a person named in an appellate order under section 19, or by reason of a certificate having been previously granted, or by reason of a grant of probate or letters of administration, or for any other cause, all payments made or dealings had, as regards debts and securities specified in the superseded or invalid certificate, to or with the holder of that certificate in ignorance of its supersession or invalidity, shall be held good against claims under any other certificate, or under the probate or letters of administration.

23. (1) Where a certificate has been granted under this Act or Act XXVII. of 1860,† or a grant of certain powers by curators. probate or letters of administration has been made, a curator appointed under Act XIX. of 1841‡ shall not exercise any authority lawfully belonging to the holder of the certificate, or to the executor or administrator :

(2) But persons who have paid debts or rents to a curator authorized by a Court to receive them shall be indemnified, and the curator shall be responsible for the payment thereof to the person who has obtained the certificate, probate, or letters of administration, as the case may be.

* Act V. of 1881 † Repealed by this Act.

‡ The Succession (Property Protection) Act, 1841.

SECTIONS.

207. Administration where property left in British India.

PART XXX.

OF LIMITED GRANTS.

(a.)—Grants limited in Duration.

208. Probate of copy or draft of lost will

209. Probate of contents of lost or destroyed will.

210. Probate of copy where original exists.

211. Administration until will produced

(b.)—Grants for the Use and Benefit of Others having Right.

212. Administration, with will annexed, to attorney of absent executor

213. Administration, with will annexed, to attorney of absent person who, if present, would be entitled to administer.

214. Administration to attorney of absent person entitled to administer in case of intestacy.

215. Administration during minority of sole executor or residuary legatee.

216. Administration during minority of several executors or residuary legatees

217. Administration for use and benefit of lunatic *jus habens*.

218. Administration *pendente lite*.

(c.)—For Special Purposes.

219. Probate limited to purpose specified in will

220. Administration with will annexed limited to particular purpose

221. Administration limited to property in which person has beneficial interest

222. Administration limited to suit.

SECTIONS

223. Administration limited to purpose of becoming party to suit to be brought against administrator

224. Administration limited to collection and preservation of deceased's property.

225. Appointment, as administrator, of person other than one who, under ordinary circumstances, would be entitled to administration.

(d.)—Grants with Exception.

226. Probate or administration with will annexed subject to exception.

227. Administration with exception

(e.)—Grants of the Rest.

228. Probate or administration of rest.

(f.)—Grants of Effects unadministered.

229. Grant of effects unadministered

230. Rules as to grants of effects unadministered

231. Administration when limited grant expired, and still some part of estate unadministered.

(g.)—Alteration in Grants.

232. What errors may be rectified by Court.

233. Procedure where codicil discovered after grant of administration with will annexed.

(h.)—Revocation of Grants.

234. Revocation or annulment for just cause
"just cause."

THE FIRST SCHEDULE.

ENACTMENTS REPEALED.

(See Section 2.)

Number and year.	Subject or title.	Extent of repeal.
<i>Acts of the Governor-General in Council.</i>		
XXVII of 1860.	Collection of Debts on Successions.	So much as has not been repealed.
XIV. of 1869 ...	Bombay Civil Courts Act, 1869.	In section 16, from and inclusive of the words and figures, "Bombay Regulation VIII. of 1827," down to and inclusive of the words, "representatives of deceased persons) and "
XV. of 1874 ...	Laws Local Extent Act, 1874.	So much as relates to Act XXVII. of 1860.
XIII of 1879 ...	Oudh Civil Courts Act, 1879	Section 25, clause (3), relating to applications for certificates under Act XXVII. of 1860
V. of 1881 ...	Probate and Administration Act, 1881.	Sections 151 and 153.
XVIII. of 1884.	Punjab Courts Act, 1884.	Section 29, sub-section (1), clause (a).
XII. of 1887 ...	Bengal, North-Western Provinces, and Assam Civil Courts Act, 1887.	Section 23, sub-section (2), clause (c).

Act of the Lieutenant-Governor of Bengal in Council.

VII. of 1880* ...	Public Demands Recovery Act, 1880.	In section 7, clause (3), the words, "and the note to paragraph 12 of Schedule I."
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* Since entirely repealed by the Public Demands Recovery Act (Ben. Act I. of 1895).

SECTIONS.

261. Procedure in contentious cases.
 262. Payment to executor or administrator before probate or administration re-revoked.
 Right of such executor or administrator to recoup himself.
 263. Appeals from orders of District Judge.
 264. Concurrent jurisdiction of High Court.

PART XXXII.

OF EXECUTORS OF THEIR OWN WRONG

265. Executor of his own wrong.
 266. Liability of executor of his own wrong.

PART XXXIII.

OF THE POWERS OF AN EXECUTOR OR ADMINISTRATOR —

267. In respect of causes of action surviving deceased, and rents due at death
 268. Demands and rights of action of or against deceased survivor to and against executor or administrator
 269. Power of executor or administrator to dispose of property
 270. Purchase by executor or administrator of deceased's property.
 271. Powers of several executors or administrators exercisable by one
 272. Survival of powers on death of one of several executors or administrators.
 273. Powers of administrator of effects unadministered.
 274. Powers of administrator during minority.
 275. Powers of married executrix or administratrix.

SECTIONS.

PART XXXIV.

OF THE DUTIES OF AN EXECUTOR OR ADMINISTRATOR.—

276. As to deceased's funeral.
 277. Inventory and account.
 277A. Inventory to include property in any part of British India in certain cases.
 278. As to property of, and debts owing to, deceased
 279. Expenses to be paid before all debts
 280. Expenses to be paid next after such expenses
 281. Wages for certain services to be next paid, and then other debts
 282. Save as aforesaid, all debts to be paid equally and rateably.
 283. Application of moveable property to payment of debts, where domicile not in British India
 284. Creditor paid in part under section 283 to bring payment into account before sharing in proceeds of immoveable property.
 285. Debts to be paid before legacies.
 286. Executor or administrator not bound to pay legacies without indemnity
 287. Abatement of general legacies. Executor not to pay one legatee in preference to another
 288. Non-abatement of specific legacy when assets sufficient to pay debts.
 289. Right under demonstrative legacy when assets sufficient to pay debts and necessary expenses.
 290. Rateable abatement of specific legacies
 291. Legacies treated as general for purpose of abatement

THE SECOND SCHEDULE—*Continued.*

In the Court of
 On the application of *A B.* made to me on the day
 of , I hereby extend this certificate to the following debts and
 securities, namely :—

Debts.

Serial number.	Name of debtor.	Amount of debt, includ- ing interest, on date of application for exten- sion.	Description and date of instrument, if any, by which the debt is se- cured.

Securities.

Serial number	DESCRIPTION			Market-value of security on date of application for extension.
	Distinguish- ing number or letter of security	Name, title, or class of security.	Amount or par value of security	

This extension empowers *A B* to collect those debts [and] [to receive]
 [interest] [dividends] [on] [to negotiate] [to transfer] [those securities].

Dated this day of .

District Judge.

SECTIONS.

320. Distribution of assets.
Creditor may follow assets.
321. Creditor may call upon legatee to refund.
322. When legatee, not satisfied or compelled to refund under section 321, cannot oblige one paid in full to refund.
323. When unsatisfied legatee must first proceed against executor, if solvent.
324. Limit to refunding of one legatee to another.
325. Refunding to be without interest.
326. Residue after usual payments to be paid to residuary legatee.
- 326A. Transfer of assets from British India to executor or administrator in country of domicile for distribution.

SECTIONS.

PART XL.

OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR FOR DEVASTATION.

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SCHEDULE.—[Repealed.]

ACT XIX, OF 1841

[The Succession (Property Protection) Act, 1841].*

PASSED ON THE 6TH SEPTEMBER 1841.

*An Act for the Protection of Moveable and Immoveable Property
against Wrongful Possession in cases of Successions.*

WHEREAS much inconvenience has been experienced where
persons have died possessed of move-
able and immoveable property, and the
same has been taken upon pretended claims of right by gift or
succession; the difficulty of ascertaining the precise nature of the
moveable property in such cases, the opportunities for misappropriating such property and also the profits of real property, the
delays of a regular suit when vexatiously protracted, and the inability of heirs when out of possession to prosecute their rights,
affording strong temptations for the employment of force or fraud in
order to obtain possession : and whereas, from the above causes, the

* This is the short title given by the Indian Short Titles Act (XIV. of 1897).

The Succession (Property Protection) Act (XIX. of 1841) has been declared to be in force in the whole of British India (except as regards the Scheduled Districts) by the Laws Local Extent Act (XV. of 1874), s. 3.

Act XIX of 1841 has been declared in force in the Arakan Hill District (with modifications and with the exception of s. 16) by the Arakan Hill District Laws Regulation (IX of 1874).

The Act has been extended to Sindh by Bom Act XII of 1866 (Courts, Sindh), s. 12

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act (XIV of 1874), to be in force in the following Scheduled Districts, namely —

- (1) The Taluqs of Bhadrachalam and Rakapilli and the Rampa Country (see *Gazette of India*, 1879, Pt. I, p. 630) :
- (2) Sindh (see *Gazette of India*, 1880, Pt. I., p. 672) :
- (3) West Jalpaiguri (see *Gazette of India*, 1881, Pt. I., p. 74) :
- (4) The District of Hazaribagh (see *Gazette of India*, 1881, Pt. I., p. 507) :

Interpretation¹-clause.

3.* In this Act, unless there be something repugnant in the subject or context,—

Words importing the singular number include the plural;
 Number. words importing the plural number include the singular; and words importing the male sex include females :

"Person" includes any company or association, or body of persons, whether incorporated or not :
 "Person."

"Year."
 "Month." "Year" and "month" respectively mean a year and month reckoned according to the British calendar :

"Immoveable property" includes land, incorporeal tenements, and things attached to the earth, or permanently fastened to anything which is attached to the earth :
 "Immoveable property"

"Moveable property." "Moveable property" means property of every description except immoveable property :

"Province." "Province" includes any division of British India having a Court of the last resort :

"British India" means the territories which are or may become vested in Her Majesty or Her Successors by the Statute 21 & 22 Vict., cap. 106 (*An Act for the better Government of India*).†
 "British India."
 cap. 106 (*An Act for the better Government of India*).†

"District Judge" means the Judge of a principal Civil Court of original jurisdiction :

"Minor"‡ means any person who shall not have completed the age of eighteen years, and "minority" means the status of such person :
 "Minor"
 "Minority."

* Compare the Probate and Administration Act (V. of 1881), s. 3.
 † Here certain words, repealed by the Repealing Act (XII. of 1891), have been omitted.

‡ See 1 B. L. R., O. C. J., 13, Act IX, of 1875, s. 3.

such proceedings shall be required by or on behalf of parties giving satisfactory proof that they are likely to be materially prejudiced if left to the ordinary remedy of a regular suit—

1. It is hereby enacted that, whenever a person dies leaving property, moveable or immoveable, it shall be lawful for any person claiming succession to property of deceased may apply for relief against wrongful possession. a right by succession thereto, or to any portion thereof, to make application to the Judge of the Court of the district where any part of the property is found or situate for relief, either after actual possession has been taken by another person, or when forcible means of seizing possession are apprehended.

2. It shall be lawful for any agent, relative, or near friend, or Agent, &c., may apply in for the Court of Wards in cases with-
behalf of minor, &c. in their cognisance, in the event of any minor, disqualified, or absent person being entitled by succession to such property as aforesaid, to make the like application for relief.

3. The Judge to whom such application shall be made shall, in the first place, enquire by the Enquiry made by Judge. solemn declaration of the complainant, and by witnesses and documents at his discretion, whether there be strong reasons for believing that the party in possession, or taking forcible means for seizing possession, has no lawful title, and that the applicant, or the person on whose behalf he applies, is really entitled, and is likely to be materially prejudiced if left to the ordinary remedy of a regular suit, and that the application is made *bona fide*.

4. In case the Judge shall be satisfied of the existence of such strong ground of belief, but not otherwise, he shall cite the party complained of, and give notice of vacant or disturbed possession by publication, and, after the expiration of a reasonable time, shall determine summarily the right to possession (subject to regular suit as hereinafter mentioned), and shall deliver possession accordingly: provided always that the Judge shall have the power to appoint an officer who shall take an inventory of effects, and seal or otherwise secure the same, upon being applied to for the purpose, without delay, whether he shall have concluded the enquiry necessary for citing the party complained of or not.

any act in respect of his or her own property which he or she could have done if unmarried.*

PART II.

OF DOMICILE.

5. Succession to the immovable property in British India of a person deceased is regulated by the law of British India, wherever he may have had his domicile at the time of his death.

Law regulating succession to deceased person's immovable and moveable property respectively.

Succession to the moveable property of a person deceased is regulated by the law of the country in which he had his domicile at the time of his death.

Illustrations

(a) A, having his domicile in British India, dies in France, leaving moveable property in France, moveable property in England, and property, both moveable and immovable, in British India. The succession to the whole is regulated by the law of British India.

(b) A an Englishman, having his domicile in France, dies in British India, and leaves property, both moveable and immovable, in British India. The succession to the moveable property is regulated by the rules which govern in France, the succession to the moveable property of an Englishman dying domiciled in France, and the succession to the immovable property is regulated by the law of British India.

6. A person can only have one domicile for the purpose of succession to his moveable property.

One domicile only affects succession to moveables

7 The domicile of origin of every person of legitimate birth is in the country in which, at the time of his birth, his father was domiciled or, if he is a posthumous child, in the country in which his father was domiciled at the time of the father's death.

Domicile of origin of person of legitimate birth.

* See 8 B L R. 373. "This section shall not apply, and shall be deemed never to have applied, to any marriage, one or both of the parties to which professed, at the time of the marriage, the Hindu, Mahomedan, Buddhist, Sikh, or Jaina religion."—Married Women's Property Act (III of 1874), s 2, last para.

able, shall be taken generally to answer all cases for which the person may be afterwards appointed curator, yet no delay in the taking of security shall prevent the Judge from immediately investing the curator with the powers of his office.

8. Where the estate of the deceased person shall consist, wholly or in part, of land paying revenue to Government, in all matters regarding the propriety of citing the party in possession, of appointing a curator, and of nominating individuals to that appointment, the Judge shall demand a report from the Collector, and the Collector is hereby required to furnish the same. In cases of urgency, the Judge may proceed, in the first instance, without such report, and he shall not be obliged to act in conformity thereto; but, in case of his acting otherwise than according to such report, he shall immediately forward a statement of his reasons to the Court of Sadr Diwān Adalat, and the Court of Sadr Diwān Adalat, if they shall be dissatisfied with such reasons, shall direct the Judge to proceed conformably to the report of the Collector.

9. The curator shall be subject to all orders of the Judge regarding the institution or the defence of suits, and all suits may be instituted or defended in the name of the curator on behalf of the estate. Provided that an express authority shall be requisite in the sanad of the curator's appointment for the collection of debts or rents; but such express authority shall enable the curator to give a full acquittance for any sums of money received by virtue thereof.

10. Pending the custody of the property by the curator, it shall be lawful for the Judge to make such allowances to parties having a *prima-facie* right thereto as, upon a summary investigation of the rights and circumstances of the parties interested, he shall consider that necessity may require taking, at his discretion, security for the repayment thereof with interest, in case the party shall, upon the adjudication of the summary suit, appear not to be entitled thereto.

11. The curator shall file monthly accounts in abstract, and at the period of every three months, it shall be filed by the curator. his administration last so long, and, upon

Calcutta for many years in the hope of such political changes as may enable him to return with safety to Chandernagore: He does not, by such residence, acquire a domicile in British India.

(g.) A, having come to Calcutta under the circumstances stated in the last preceding illustration, continues to reside there after such political changes have occurred as would enable him to return with safety to Chandernagore, and he intends that his residence in Calcutta shall be permanent: A has acquired a domicile in British India.

11. Any person may acquire a domicile in British India by Special mode of acquiring domicile in British India making and depositing in some office in British India (to be fixed by the Local Government) a declaration in writing under his hand of his desire to acquire such domicile, provided that he shall have been resident in British India for one year immediately preceding the time of his making such declaration.

12. A person who is appointed by the Government of one country to be its ambassador, consul, Domicile not acquired by residence as representative of foreign Government, or as part of his family. or other representative in another country, does not acquire a domicile in the latter country by reason only of residing there in pursuance of his appointment, nor does any other person acquire such domicile by reason only of residing with him as part of his family or as a servant

13. A new domicile continues until the former domicile Continuanee of new domicile has been resumed, or another has been acquired.

14. The domicile of a minor follows the domicile of the parent from whom he derived his domicile of origin.
Minor's domicile.

Exception.—The domicile of a minor does not change with that of his parent if the minor is married, or holds any office or employment in the service of Her Majesty, or has set up, with the consent of the parent, in any distinct business.

15. By marriage a woman acquires the domicile of her Domicile acquired by husband if she had not the same domicile before.
woman on marriage.

Wife's domicile during marriage. **16.** The wife's domicile during the marriage follows the domicile of her husband.

decease in the event of minority or otherwise, in opposition to such directions; but in every such case, so soon as the Judge having jurisdiction over the property of a deceased person shall be satisfied of the existence of such directions, he shall give effect thereto.

16. This Act shall not be in force for the purpose of disturbing the possession of the Court of Wards to be made curator in case of Wards of any Presidency; and in case minors having property subject to its jurisdiction. a minor or other disqualified person whose property shall be subject to the Court of Wards shall be the party on whose behalf application is made under this Act, the Judge, if he determines to cite the party in possession, and also appoint a curator, shall invest the Court of Wards with the curatorship of the estate, pending the suit, without taking such security as aforesaid, and in case the minor or other disqualified person shall, upon the adjudication of the summary suit, appear to be entitled to the property, possession shall be delivered to the Court of Wards.

17. Nothing in this Act contained shall be any impediment to Saving of right to bring the bringing of a regular suit, either by regular suit. the party whose application may have been rejected before or after citing the party in possession, or by the party who may have been evicted from the possession, under this Act.

18. The decision of the Judge upon the summary suit under Effect of decision on summary suit. this Act shall have no other effect than that of settling the actual possession; but for this purpose it shall be final, not subject to any appeal or order for review.

19. It shall be lawful for the Governments of the respective Appointment of public Presidencies to appoint public curators for any district or number of districts. curators. And the Judge having jurisdiction shall nominate such public curator or curators in all cases where the choice of a curator is left discretionary with him under the preceding provisions of this Act.

20. [Power to appoint Ecclesiastical Registrar or Curators to receive effects in certain cases.] Repealed by Act VIII. of 1855, s. 13.

22. Collateral consanguinity is that which subsists between two persons who are descended from the same stock or ancestor, but neither of whom is descended in a direct line from the other.

For the purpose of ascertaining in what degree of kindred any collateral relative stands to a person deceased, it is proper to reckon upwards from the person deceased to the common stock, and then downwards to the collateral relative, allowing a degree for each person, both ascending and descending.

23. For the purpose of succession, there is no distinction between those who are related to a person deceased through his father and those who are related to him through his mother;

nor between those who are related to him by the full blood and those who are related to him by the half-blood;

nor between those who were actually born in his lifetime and those who, at the date of his death, were only conceived in the womb, but who have been subsequently born alive.

24. In the annexed table of kindred, the degrees are computed as far as the sixth, and are marked by numeral figures.

The person whose relatives are to be reckoned, and his cousin-german or first cousin, are, as shown in the table, related in the fourth degree, there being one degree of ascent to the father and another to the common ancestor, the grandfather; and from him one of descent to the uncle, and another to the cousin-german; making in all four degrees.

A grandson of the brother and a son of the uncle, *i. e.*, a great-nephew and a cousin-german, are in equal degree, being each four degrees removed.

A grandson of a cousin-german is in the same degree as the grandson of a great-uncle, for they are both in the sixth degree of kindred.

ACT VII. OF 1887: The Suits' Valuation Act, 1887.*

RECEIVED THE G.-G.'s ASSENT ON THE 11TH FEBRUARY 1887.

An Act to prescribe the mode of valuing certain Suits for the purpose of determining the Jurisdiction of Courts with respect thereto.

WHEREAS it is expedient to prescribe the mode of valuing certain suits for the purpose of determining the jurisdiction of Courts with respect thereto ; It is hereby enacted as follows :—

Title. 1. This Act may be called the
Suits' Valuation Act, 1887.

PART I.

SUITS RELATING TO LAND.

2. This Part shall extend to such local areas, and come into
Extent and commencement force therein on such dates, as the Gov-
of Part I. ernor-General in Council, by notifica-
tion in the *Gazette of India*, directs.†

* For Statement of Objects and Reasons see *Gazette of India*, 1886, Pt V, p 791, for Report of the Select Committee see *ibid* 1887, Pt. IV., p 18, and for Proceedings in Council see *ibid* 1886 Supplement, pp. 1131 and 1155 and *ibid*, 1887 Pt VI, pp 16 and 31

Act VII of 1887 has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act (XIII. of 1898).—See s. 4 and the First Schedule

It had previously been extended there by notification under s 5 of the Scheduled Districts Act (XIV of 1874) —See *Burma Gazette* 1888 Pt. I, p. 362

It has been declared in force in British Baluchistan by the British Baluchistan Laws Regulation (I of 1890)

† Part I of the Act has under s 2, been declared to extend to the Punjab, and to come into force therein on the 1st day of March 1889.—See *Gazette of India*, 1889, Pt I, p 107

PART IV.*

OF INTESTACY.

25. A man is considered to die intestate in respect of all property of which he has not made a testamentary disposition which is capable of taking effect.

As to what property deceased considered to have died intestate.

Illustrations.

(a.) A has left no will: He has died intestate in respect of the whole of his property.

(b.) A has left a will, whereby he has appointed B his executor; but the will contains no other provisions: A has died intestate in respect of the distribution of his property.

(c.) A has bequeathed his whole property for an illegal purpose: A has died intestate in respect of the distribution of his property.

(d.) A has bequeathed 1,000*l.* to B and 1,000*l.* to the eldest son of C, and has made no other bequest, and has died leaving the sum of 2,000*l.* and no other property. C died before A without having ever had a son: A has died intestate in respect of the distribution of 1,000*l.*

26. Such property devolves upon the wife or husband, or upon those who are of the kindred of the deceased, in the order and according to the rules herein prescribed.

Devolution of such property:

Explanation.—The widow is not entitled to the provision hereby made for her if, by a valid contract made before her marriage, she has been excluded from the distributive share of her husband's estate:

27. Where the intestate has left a widow, if he has also left any lineal descendants, one-third of his property shall belong to his widow, and the remaining two-thirds shall go to his lineal descendants, according to the rules herein contained.

Where intestate has left widow and lineal descendants, or widow and kindred only, or widow and no kindred:

If he has left no lineal descendant, but has left persons who are of kindred to him, one-half of his property shall belong to his widow,

* Part IV. (excepting s. 25) does not apply to Parsis—See the Parsi Intestate Succession Act (XXI. of 1865), s. 8.

8. Where, in suits other than those referred to in the Court

Court-fee value and jurisdictional value to be the same in certain suits. Fees Act, 1870,* section 7, paragraphs v, vi. and ix., and paragraph x., clause (d), court-fees are payable *ad valorem*

under the Court Fees Act, 1870,* the value as determinable for the computation of court-fees and the value for purposes of jurisdiction shall be the same.

9. When the subject-matter of suits of any class, other than

Determination of value of suits mentioned in the Court Fees Act, certain suits by High Court. 1870,* section 7, paragraphs v. and vi., and paragraph x., clause (d), is such that, in the opinion of the High Court, it does not admit of being satisfactorily valued, the High Court may, with the previous sanction of the Local Government, direct that suits of that class shall, for the purposes of the Court Fees Act, 1870,* and of this Act and any other enactment for the time being in force, be treated as if their subject-matter were of such value as the High Court thinks fit to specify in this behalf.†

**10. [Repeal of s. 32, Punjab Courts Act (XVIII. of 1884).]
Repealed by the Repealing and Amending Act (XII. of 1891).**

PART III.

SUPPLEMENTAL PROVISIONS.

11. (1) Notwithstanding anything in section 578 of the Code

Procedure where objection is taken on appeal or revision that a suit or appeal was not properly valued for jurisdictional purposes.

of Civil Procedure ‡ an objection, that, by reason of the over-valuation or under-valuation of a suit or appeal, a Court of first instance or Lower Appellate Court, which had not jurisdiction with respect to the suit or appeal, exercised jurisdiction with respect thereto, shall not be entertained by an Appellate Court unless—

* Act VII. of 1870.

† For rules as to valuation of certain classes of suits under this section in—

(1) the Central Provinces, *see* the Central Provinces List of Local Rules and Orders, Ed. 1896, p. 246;

(2) Oudh, *see* North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p. 122.

‡ This reference to s. 578 of Act XIV. of 1882 should now be meant to apply to s. 99 of Act V. of 1908 (the new Code)—*See* s. 158 of the latter Act.

(b.) But, if Henry has died leaving no child, then the whole is equally divided between the intestate's five grandchildren—the children of John and Mary.

(c.) A has two children, and no more—John and Mary. John dies before his father, leaving his wife pregnant. Then A dies, leaving Mary surviving him, and in due time a child of John is born. A's property is to be equally divided between Mary and such posthumous child.

32 In like manner the property shall go to the surviving lineal descendants who are nearest in degree to the intestate, where they are only great grandchildren or remoter lineal descendants. all in the degree of great-grandchildren to him, or are all in a more remote degree.

33. If the intestate has left lineal descendants who do not all stand in the same degree of kindred to him, and the persons through whom the more remote are descended from him are dead, the property shall be divided into such a number of equal shares as may correspond with the number of the lineal descendants of the intestate who either stood in the nearest degree of kindred to him at his decease, or, having been of the like degree of kindred to him, died before him, leaving lineal descendants who survived him, and

one of such shares shall be allotted to each of the lineal descendants who stood in the nearest degree of kindred to the intestate at his decease; and

one of such shares shall be allotted in respect of each of such deceased lineal descendants, and

the share allotted in respect of each of such deceased lineal descendants shall belong to his surviving child or children or more remote lineal descendants, as the case may be, such surviving child or children or more remote lineal descendants always taking the share which his or their parent or parents would have been entitled to respectively if such parent or parents had survived the intestate.

Illustrations.

(a.) A had three children, John, Mary, and Henry. John died leaving four children, and Mary died leaving one, and Henry alone survived the father. On the death of A intestate, one-third is allotted to Henry, one-third to John's four children, and the remaining third to Mary's one child.

ACT NO. IV. OF 1882.

The Transfer of Property Act, 1882.

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prised in a settlement made previous to the marriage, which he or she would not acquire thereby if both were domiciled in British India at the time of the marriage.

45. The property of a minor may be settled in contemplation of marriage, provided the settlement be made by the minor with the approbation of the minor's father, or if he be dead or absent from British India, with the approbation of the High Court.

PART VII *

OF WILLS AND CODICILS.

Persons capable of making wills

46. Every person of sound mind and not a minor may dispose of his property by will.

Explanation 1.—A married woman may dispose by will of any property which she could alienate by her own act during her life.

Explanation 2.—Persons who are deaf, or dumb, or blind, are not thereby incapacitated for making a will if they are able to know what they do by it.

Explanation 3.—One who is ordinarily insane may make a will during an interval in which he is of sound mind

Explanation 4.—No person can make a will while he is in such a state of mind, whether arising from drunkenness, or from illness, or from any other cause, that he does not know what he is doing.

Illustrations

(a) A can perceive what is going on in his immediate neighbourhood, and can answer familiar questions, but has not a competent understanding as to the nature of his property or the persons who are of kindred to him, or in whose favour it would be proper that he should make his will. A cannot make a valid will

(b) A executes an instrument purporting to be his will, but he does not understand the nature of the instrument, nor the effect of its provisions: This instrument is not a valid will

(c) A, being very feeble and debilitated, but capable of exercising a judgment as to the proper mode of disposing of his property, makes a will: This is a valid will.

* Of Part VII, ss. 46, 48, and 49 apply to the wills of Hindus, Jains, Sikhs, and Buddhists in the Lower Provinces of Bengal and in the towns of Madras and Bombay.—See the Hindu Wills Act (XXI. of 1870), s. 2.

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PART VIII.*

OF THE EXECUTION OF UNPRIVILEGED WILLS.

50. Every testator, not being a soldier employed in an expedition
 Execution of unprivileged wills. or engaged in actual warfare or a mariner
 at sea, must execute his will according to
 the following rules :—

First.—The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction.

Second.—The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.

Third.—The will shall be attested by two or more witnesses, each of whom must have seen the testator sign or affix his mark to the will, or have seen some other person sign the will in the presence and by the direction of the testator, or have received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person ; and each of the witnesses must sign the will in the presence of the testator,† but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

51. If a testator, in a will or codicil duly attested, refers to
 Incorporation of papers by reference any other document then actually written, as expressing any part of his intentions, such documents shall be considered as forming a part of the will or codicil in which it is referred to.

PART IX.

OF PRIVILEGED WILLS.

52. Any soldier being employed in an expedition, or engaged
 Privileged will. in actual warfare, or any mariner being
 at sea, may, if he has completed the age

* Part VIII. applies to the wills of Hindus, Jainas, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay—See the Hindu Wills Act (XXI. of 1870), s. 2.

† 3 N.-W P. 35.

SECTIONS.

- 131. Notice to be in writing signed.
- 132. Liability of transferee of actionable claim
- 133. Warranty of solvency of debtor.
- 134. Mortgaged debt.
- 135. Assignment of rights under marine or fire policy of insurance

SECTIONS.

- 136. Incapacity of officers connected with Courts of Justice.
- 137. Saving of negotiable instruments, &c.

THE SCHEDULE:

ENACTMENTS REPEALED.

Fourth.—If the soldier or mariner shall have written instructions for the preparation of his will, but shall have died before it could be prepared and executed, such instructions shall be considered to constitute his will.

Fifth.—If the soldier or mariner shall, in the presence of two witnesses, have given verbal instructions for the preparation of his will, and they shall have been reduced into writing in his lifetime, but he shall have died before the instrument could be prepared and executed, such instructions shall be considered to constitute his will, although they may not have been reduced into writing in his presence, nor read over to him.

Sixth.—Such soldier or mariner as aforesaid may make a will by word of mouth by declaring his intentions before two witnesses present at the same time.

Seventh.—A will made by word of mouth shall be null at the expiration of one month after the testator shall have ceased to be entitled to make a privileged will.

PART X*

OF THE ATTESTATION, REVOCATION, ALTERATION, AND REVIVAL OF WILLS.

54. A will shall not be considered as insufficiently attested by
 Effect of gift to attesting witness reason of any benefit thereby given, either by way of bequest or by way of appointment, to any person attesting it, or to his or her wife or husband ;

but the bequest or appointment shall be void so far as concerns the person so attesting, or the wife or husband of such person, or any person claiming under either of them.

Explanation.—A legatee under a will does not lose his legacy by attesting a codicil which confirms the will.

55. No person, by reason of interest in, or of his being an
 Witness not disqualified by interest or by being executor. executor of, a will, is disqualified as a witness to prove the execution of the will, or to prove the validity or invalidity thereof.

* Of Part X, ss 55 and 57 to 60 (both inclusive) apply to the wills of Hindus, Jains, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay.—See the Hindu Wills Act (XXI. of 1870), s. 2

in Council, the Lieutenant-Governor of the Punjab, and the Chief Commissioner of British Burma.*

But any of the said Local Governments may, from time to time, by notification in the local official Gazette, extend† this Act "or any part thereof"‡ to the whole of any specified part of the territories under its administration.

"And any Local Government may, with the previous sanction of the Governor-General in Council, from time to time, by notification in the local official Gazette, exempt,§ either retrospectively or prospectively, any part of the territories administered by such Local Government from all or any of the following provisions, namely:—

"Section 54, paragraphs 2 and 3, 59, 107, and 123."

Notwithstanding anything in the foregoing part of this section, sections 54, paragraphs 2 and 3, 59, 107, and 123 shall not extend or be extended to any district or tract of country for the time being excluded from the operation of the Indian Registration Act, 1877,¶ under the power conferred by the first section of that Act or otherwise.**

* This reference to British Burma should now be read as referring to Lower Burma.—*See* the Upper Burma Laws Act (XX. of 1885), s. 4, and now the Burma Laws Act (XIII of 1898), by which, Act XX. of 1885 has been repealed. The Chief Commissioner is now Lieutenant-Governor of Burma.—*See* Proclamation, dated 9th April 1897, in *Gazette of India*, 1897, Pt. I., p. 261.

† Act IV. of 1882 has, from the 1st January 1893, been extended to—

- (1) the whole of the territories (other than the Scheduled Districts) under the administration of the Government of Bombay (*see Bombay Government Gazette*, 1892, Pt. I., p. 1071); and
- (2) the area included within the local limits of the ordinary civil jurisdiction of the Recorder of Rangoon (*see Burma Gazette*, 1892, Pt. I., p. 373).

‡ The words quoted have been inserted by Act VI. of 1904.

§ No such exemption has yet been made.

¶ The two clauses quoted have been substituted for the original clause by the Transfer of Property Act (1882) Amendment Act (III. of 1885), s. 1. S. 54, paras. 2 and 3, and ss. 59, 107, and 123 of the Transfer of Property Act, 1882, with respect to the transfer of property by registered instrument, shall, on and from the commencement of the Cantonments Act (XIII. of 1889), extend to every cantonment in British India.—*See* the Cantonments Act (XIII. of 1889), s. 32 (1).

¶ Act III. of 1877.

** This clause has been added by Act III. of 1885, s. 2, and is to be deemed to have been added from the date on which Act IV. of 1882 came into force.

revoke it, and accompanied with such formalities as would be sufficient to give validity to a privileged will, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

Explanation.—In order to the revocation of a privileged will or codicil by an act accompanied with such formalities as would be sufficient to give validity to a privileged will, it is not necessary that the testator should, at the time of doing that act, be in a situation which entitles him to make a privileged will.

60. No unprivileged will or codicil, nor any part thereof, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same ;

and when any will or codicil which shall be partly revoked, and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown by the will or codicil.

PART XI.*

OF THE CONSTRUCTION OF WILLS.

61. It is not necessary that any technical words or terms of art shall be used in a will, but only that the wording shall be such that the intentions of the testator can be known therefrom.

62. For the purpose of determining questions as to what person or what property is denoted by any words used in a will, a Court must enquire into every material fact relating to the persons who claim to be interested under such will, the property which is claimed as the subject of disposition, the circum-

* Of Part XI, ss 61-77 (both inclusive), 82, 83, 85, and 88 to 98 (both inclusive), apply to the wills of Hindus, Jains, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay.—See the Hindu Wills Act (XXI. of 1870), s. 2.

“‘actionable claim’ means a claim to any debt, other than a debt secured by mortgage of immovable property, or by hypothecation or pledge of moveable property, or to any beneficial interest in moveable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional, or contingent:”*

and a person is said to have “notice” of a fact when he actually knows that fact, or when, but for wilful abstention from an inquiry or search which he ought to have made, or gross negligence, he would have known it, or when information of the fact is given to or obtained by his agent under the circumstances mentioned in the Indian Contract Act, 1872,† s. 229.

Enactments relating to contracts to be taken as part of Act IX. of 1872.

4. The chapters and sections of this Act which relate to contracts shall be taken as part of the Indian Contract Act, 1872.‡

‡ And sections 54, paragraphs 2 and 3, 59, 107, and 123 shall be read as supplemental to the Indian Registration Act, 1877.§

CHAPTER II.]

OF TRANSFERS OF PROPERTY BY ACT OF PARTIES.

(A.)—*Transfer of Property, whether Moveable or Immoveable.*

5. In the following sections “transfer of property” means “Transfer of property” an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself and one or more other living persons, and “to transfer property” is to perform such act.

* This definition of “actionable claim” has been inserted by the Transfer of Property Act (II. of 1900), s. 2.

† Act IX. of 1872.

‡ This paragraph has been added by the Transfer of Property Act (1882) Amendment Act (III. of 1885), s. 3.

§ See the Indian Registration Act (III. of 1877).

¶ Nothing in Ch. II. is to be deemed to affect any rule of Hindu, Muhammadan, or Buddhist law.—See s. 2, *supra*.

(d.) The testator gives his residuary estate to be divided among "his seven children,"* and, proceeding to enumerate them, mentions six names only. The omission shall not prevent the seventh child from taking a share with the others.

(e) The testator, having six grandchildren,* makes a bequest to "his six grandchildren," and, proceeding to mention them by their Christian names, mentions one twice over, omitting another altogether. The one whose name is not mentioned shall take a share with the others

(f) The testator bequeaths "1,000 rupees to each of the three children* of A." At the date of the will, A has four children. Each of these four children shall, if he survives the testator, receive a legacy of 1,000 rupees.

64. Where any word material to the full expression of the meaning has been omitted, it may be supplied by the context.

Illustration.

The testator gives a legacy of "five hundred" to his daughter A, and a legacy of "five hundred rupees" to his daughter B. A shall take a legacy of five hundred rupees

65. If the thing which the testator intended to bequeath can be sufficiently identified from the description of it given in the will, but some parts of the description do not apply, such parts of the description shall be rejected as erroneous, and the bequest shall take effect.

Illustrations.

(a) A bequeaths to B, "his marsh lands lying in L, and in the occupation of X." The testator had marsh-lands lying in L, but had no marsh-lands in the occupation of X. The words "in the occupation of X" shall be rejected as erroneous, and the marsh-lands of the testator lying in L shall pass by the bequest.

(b.) The testator bequeaths to A "his zemindari of Rampur." He had an estate at Rampur, but it was a taluq, and not a zamindari. The taluq passes by this bequest.

66. If the will mentions several circumstances as descriptive of the thing which the testator intends to bequeath, and there is any property of his in respect of which all those circumstances exist, the bequest shall be considered as limited to such pro-

* See the Hindu Wills Act (XXI. of 1870), s. 6 (reproduced at footnote of p. 23, *supra*).

own, is competent to transfer such property, either wholly or in part, and either absolutely or conditionally, in the circumstances, to the extent, and in the manner, allowed and prescribed by any law for the time being in force.

8. Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property, and in the legal incidents thereof.

Operation of transfer.

Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth ;

and where the property is machinery attached to the earth, the moveable parts thereof ;

and, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows, and all other things provided for permanent use therewith ;

and where the property is a debt or other actionable claim, the securities therefor (except where they are also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer ;

and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect.

9. A transfer of property may be made without writing in every case in which a writing is not expressly required by law.

Oral transfer.

10. Where property is transferred subject to a condition or limitation, absolutely restraining the transferee or any person claiming under him from parting with, or disposing of, his interest in the property, the condition or limitation is void except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him : provided that property may be transferred to or for the benefit of a woman (not being a Hindu, Muhammadan, or Buddhist), so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein.

Condition restraining alienation.

Illustrations.

(a) A man has an aunt Caroline and a cousin Mary, and has no aunt of the name of Mary. By his will he bequeaths 1,000 rupees to "his aunt Caroline" and 1,000 rupees to "his cousin Mary," and afterwards, bequeaths 2,000 rupees to "his before-mentioned aunt Mary." There is no person to whom the description given in the will can apply, and evidence is not admissible to show who was meant by "his before-mentioned aunt Mary." The bequest is therefore void for uncertainty under section 76.

(b) A bequeaths 1,000 rupees to _____, leaving a blank for the name of the legatee. Evidence is not admissible to show what name the testator intended to insert.

(c) A bequeaths to B _____ rupees, or "his estate of _____" Evidence is not admissible to show what sum or what estate the testator intended to insert.

69. The meaning of any clause in a will is to be collected from the entire instrument, and all its parts are to be construed with reference to each other; and for this purpose a codicil is to be considered as part of the will.

Illustrations.

(a) The testator gives to B a specific fund or property at the death of A, and, by a subsequent clause, gives the whole of his property to A. The effect of the several clauses taken together is to vest the specific fund or property in A for life, and after his decease in B, it appearing from the bequest to B that the testator meant to use, in a restricted sense, the words in which he describes what he gives to A.

(b.) Where a testator, having an estate, one part of which is called Black Acre, bequeaths the whole of his estate to A, and in another part of his will bequeaths Black Acre to B, the latter bequest is to be read as an exception out of the first, as if he had said "I give Black Acre to B, and all the rest of my estate to A."

70. General words may be understood in a restricted sense where it may be collected from the will that the testator meant to use them in a restricted sense; and words may be understood in a wider sense than that which they usually bear where it may be collected from the other words of the will that the testator meant to use them in such wider sense.

Illustrations.

(a.) A testator gives to A "his farm in the occupation of B," and to C "all his marsh-lands in L." Part of the farm in the occupation of B consists of marsh-lands in L, and the testator also has other marsh-lands in

15. If, on a transfer of property, an interest therein is created for the benefit of a class of persons whom come under sections 13 and 14 with regard to some of whom such interest fails by reason of any of the rules contained in sections 13 and 14, such interest fails as regards the whole class.

16. Where an interest fails by reason of any of the rules contained in sections 13, 14, and 15, any interest created in the same transaction, and intended to take effect after or upon failure of such prior interest, also fails.

17 The restrictions in sections 14, 15, and 16 shall not apply to property transferred for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety, or any other object beneficial to mankind.

18. Where the terms of a transfer of property direct that the income arising from the property shall be accumulated, such direction shall be void, and the property shall be disposed of as if no accumulation had been directed.

Exception.—Where the property is immoveable, or where accumulation is directed to be made from the date of the transfer, the direction shall be valid in respect only of the income arising from the property within one year next following such date; and, at the end of the year, such property and income shall be disposed of respectively as if the period during which the accumulation has been directed to be made had elapsed.

19. Where, on a transfer of property, an interest therein is created in favour of a person without specifying the time when it is to take effect, or in terms specifying that it is to take effect forthwith, or on the happening of an event which must happen, such interest is vested, unless a contrary intention appears from the terms of the transfer.

A vested interest is not defeated by the death of the transferee before he obtains possession.

Explanation —An intention that an interest shall not be vested is not to be inferred merely from a provision whereby the enjoy-

(b) If a man, at the commencement of his will, gives his house to A, and at the close of it directs that his house shall be sold, and the proceeds invested for the benefit of B, the latter disposition shall prevail.

Will or bequest void for uncertainty.

76. A will or bequest not expressive of any definite intention is void for uncertainty.

Illustration.

If a testator says, "I bequeath goods to A," or "I bequeath to A," or "I leave to A all the goods mentioned in a schedule," and no schedule is found; or, "I bequeath 'money,' 'wheat,' 'oil,'" or the like, without saying how much, this is void.

77. The description contained in a will of property, the subject of gift, shall, unless a contrary intention appear by the will, be deemed to refer to and comprise the property answering that description at the death of the testator.

Words describing subject refer to property answering description at testator's death.

78. Unless a contrary intention shall appear by the will, a bequest of the estate of the testator shall be construed to include any property which he may have power to appoint by will to any object he may think proper, and shall operate as an execution of such power;

and a bequest of property described in a general manner shall be construed to include any property to which such description may extend, which he may have power to appoint by will to any object he may think proper, and shall operate as an execution of such power.

79. Where property is bequeathed to or for the benefit of such of certain objects as a specified person shall appoint, or for the benefit of certain objects in such proportions as a specified person shall appoint, and the will does not provide for the event of no appointment being made, if the power given by the will be not exercised, the property belongs to all the objects of the power in equal shares.

Implied gift to objects of power in default of appointment.

Illustration.

A, by his will, bequeaths a fund to his wife for her life, and directs that, at her death, it shall be divided among his children in such proportions as she shall appoint. The widow dies without having made an appointment. The fund shall be divided equally among the children.

24. Where, on a transfer of property, an interest therein is

Transfer to such of certain persons as shall be surviving at some period not specified. to accrue to such of certain persons as shall be surviving at some period, but the exact period is not specified, the interest shall go to such of them as shall be alive when the intermediate or precedent interest ceases to exist unless a contrary intention appears from the terms of the transfer.

the exact period is not specified, the interest shall go to such of them as shall be alive when the intermediate or precedent interest ceases to exist unless a contrary intention appears from the terms of the transfer.

Illustration

A transfers property to B for life, and after his death to C and D equally to be divided between them, or to the survivor of them. C dies during the life of B. D survives B. At B's death the property passes to D.

25. An interest created on a transfer of property, and dependent upon a condition, fails if the

Conditional transfer.

fulfilment of the condition is impossible, or is forbidden by law, or is of such a nature that, if permitted, it would defeat the provisions of any law, or is fraudulent, or involves or implies injury to the person or property of another, or the Court regards it as immoral or opposed to public policy.

Illustrations.

(a.) A lets a farm to B on condition that he shall walk a hundred miles in an hour. The lease is void.

(b.) A gives Rs. 500 to B on condition that he shall marry A's daughter, C. At the date of the transfer, C was dead. The transfer is void.

(c.) A transfers Rs. 500 to B on condition that she shall murder C. The transfer is void.

(d.) A transfers Rs. 500 to his niece C if she will desert her husband. The transfer is void.

26. Where the terms of a transfer of property impose a

Fulfilment of condition precedent. condition to be fulfilled before a person can take an interest in the property, the condition shall be deemed to have been fulfilled if it has been substantially complied with.

Illustrations.

(a.) A transfers Rs. 5,000 to B on condition that he shall marry with the consent of C, D, and E. E dies. B marries with the consent of C and D. B is deemed to have fulfilled the condition.

(b.) A transfers Rs. 5,000 to B on condition that he shall marry with the consent of C, D, and E. B marries without the consent of C, D, and E, but obtains their consent after the marriage. B has not fulfilled the condition.

82.* Where property is bequeathed to any person, he is entitled to the whole interest of the property, if the testator therein unless it appears from the will that only a restricted interest was intended for him.

83.* Where property is bequeathed to a person, with a bequest in the alternative to another person or to a class of persons, if a contrary intention does not appear by the will, the legatee first named shall be entitled to the legacy if he be alive at the time when it takes effect; but, if he be then dead, the person or class of persons named in the second branch of the alternative shall take the legacy.

Illustrations.

(a) A bequest is made to A or to B. A survives the testator. B takes nothing.

(b) A bequest is made to A or to B. A dies after the date of the will and before the testator. The legacy goes to B.

(c) A bequest is made to A or to B. A is dead at the date of the will. The legacy goes to B.

(d) Property is bequeathed to A or his heirs. A survives the testator. A takes the property absolutely.

(e) Property is bequeathed to A or his nearest of kin. A dies in the lifetime of the testator. Upon the death of the testator, the bequest to A's nearest of kin takes effect.

(f) Property is bequeathed to A for life, and after his death to B or his heirs. A and B survive the testator. B dies in A's lifetime. Upon A's death, the bequest to the heirs of B takes effect.

(g) Property is bequeathed to A for life, and after his death to B or his heirs. B dies in the testator's lifetime. A survives the testator. Upon A's death, the bequest to the heirs of B takes effect.

84. Where property is bequeathed to a person, and words are added which describe a class of persons, but do not denote them as direct objects of a distinct and independent gift, such person is entitled to the whole interest of the testator therein unless a contrary intention appears by the will.

* Ss. 82 and 83 apply to the wills of Hindus, &c., in Lower Provinces of Bengal, and in the towns of Madras and Bombay.—See the Hindu Wills Act (XXI. of 1870), s. 2.

Prior disposition not affected by invalidity of ulterior disposition.

30. If the ulterior disposition is not valid, the prior disposition is not affected by it.

Illustration.

A transfers a farm to B for her life, and, if she do not desert her husband, to C. B is entitled to the farm during her life as if no condition had been inserted.

31. Subject to the provisions of section 12, on a transfer of property, an interest therein may be created with the condition superadded that it shall cease to exist in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.

Condition that transfer shall cease to have effect in case specified uncertain event happens or does not happen.

Illustrations.

(a) A transfers a farm to B for his life, with a proviso that, in case B cuts down a certain wood, the transfer shall cease to have any effect. B cuts down the wood. He loses his life-interest in the farm.

(b) A transfers a farm to B, provided that, if B shall not go to England within three years after the date of the transfer, his interest in the farm shall cease. B does not go to England within the term prescribed. His interest in the farm ceases.

32. In order that a condition that an interest shall cease to exist may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of the creation of an interest.

33. Where, on a transfer of property, an interest therein is created subject to a condition that the person taking it shall perform a certain act, but no time is specified for the performance of the act, the condition is broken when he renders impossible, permanently or for an indefinite period, the performance of the act.

Transfer conditional on performance of act, no time being specified for performance.

34. Where an act is to be performed by a person either as a condition to be fulfilled before an interest created on a transfer of property is enjoyed by him, or as a condition on the non-fulfilment of which the interest is to pass from him to another person, and a time is specified for the performance of the act, if such performance within the specified time is prevented by

Transfer conditional on performance of act, time being specified.

the words "cousins," or "first cousins," or "cousins-german," apply only to children of brothers or of sisters of the father or mother of the person whose "cousins," or "first cousins," or "cousins-german" are spoken of;

the words "first cousins once removed" apply only to children of cousins german, or to cousins-german of a parent of the person whose "first cousins once removed" are spoken of;

the words "second cousins" apply only to grandchildren of brothers or of sisters of the grandfather or grandmother of the person whose "second cousins" are spoken of;

the words "issue" and "descendants" apply to all lineal descendants whatever of the person whose "issue" or "descendants" are spoken of.

Words expressive of collateral relationship apply alike to relatives of full and of half-blood.

All words expressive of relationship apply to a child in the womb who is afterwards born alive.

87 In the absence of any intimation to the contrary in the will, the term "child," "son," or "daughter," or any word which expresses relationship, is to be understood as denoting only a legitimate relative, or, where there is no such legitimate relative, a person who has acquired, at the date of the will, the reputation of being such relative.

Illustrations.

(a) A, having three children, B, C, and D, of whom B and C are legitimate, and D is illegitimate, leaves his property to be equally divided among "his children." The property belongs to B and C in equal shares to the exclusion of D.

(b) A, having a niece of illegitimate birth, who has acquired the reputation of being his niece, and having no legitimate niece, bequeaths a sum of money to his niece. The illegitimate niece is entitled to the legacy.

(c) A, having in his will enumerated his children, and named as one of them B, who is illegitimate, leaves a legacy to "his said children." B will take a share in the legacy along with the legitimate children.

(d) A leaves a legacy to the "children of B." B is dead, and has left none but illegitimate children. All those who had, at the date of the will, acquired the reputation of being the children of B are objects of the gift.

Exception to the last-preceding four rules.—Where a particular benefit is expressed to be conferred on the owner of the property which the transferor professes to transfer, and such benefit is expressed to be in lieu of that property, if such owner claim the property, he must relinquish the particular benefit, but he is not bound to relinquish any other benefit conferred upon him by the same transaction.

Acceptance of the benefit by the person on whom it is conferred constitutes an election by him to confirm the transfer, if he is aware of his duty to elect, and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he waives enquiry into the circumstances.

Such knowledge or waiver shall, in the absence of evidence to the contrary, be presumed if the person on whom the benefit has been conferred has enjoyed it for two years without doing any act to express dissent.

Such knowledge or waiver may be inferred from any act of his which renders it impossible to place the persons interested in the property professed to be transferred in the same position as if such act had not been done.

Illustration.

A transfers to B an estate to which C is entitled, and, as part of the same transaction, gives C a coal-mine. C takes possession of the mine, and exhausts it. He has thereby confirmed the transfer of the estate to B.

If he does not, within one year after the date of the transfer, signify to the transferor or his representatives his intention to confirm or to dissent from the transfer, the transferor or his representatives may, upon the expiration of that period, require him to make his election; and, if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the transfer.

In case of disability, the election shall be postponed until the disability ceases, or until the election is made by some competent authority.

Apportionment.

36. In the absence of a contract or local usage to the contrary, all rents, annuities, pensions, dividends, and other periodical payments in

the nature of income, shall, upon the transfer of the interest of the person entitled, be apportioned to the person entitled.

Apportionment of periodical payments on determination of interest of person entitled.

ten shares in the Bank of Bengal to B." After other bequests, the will concludes with the words, "and I bequeath my ten shares in the Bank of Bengal to B." B is entitled simply to receive A's ten shares in the Bank of Bengal

(b) A, having one diamond ring which was given him by B, bequeathed to C the diamond ring which was given him by B. A afterwards made a codicil to his will, and thereby, after giving other legacies, he bequeathed to C the diamond ring which was given him by B. C can claim nothing except the diamond ring which was given to A by B.

(c.) A, by his will, bequeaths to B the sum of 5,000 rupees, and afterwards, in the same will, repeats the bequest in the same words. B is entitled to one legacy of 5,000 rupees only.

(d.) A, by his will, bequeaths to B the sum of 5,000 rupees, and afterwards, the same will, bequeaths to B the sum of 6,000 rupees. B is entitled to 11,000 rupees.

(e.) A, by his will, bequeaths to B 5,000 rupees, and by a codicil to the will he bequeaths to him 5,000 rupees. B is entitled to receive 10,000 rupees.

(f) A, by one codicil to his will, bequeaths to B 5,000 rupees, and by another codicil bequeaths to him 6,000 rupees. B is entitled to receive 11,000 rupees.

(g) A, by his will, bequeaths "500 rupees to B, because she was his nurse," and in another part of the will bequeaths 500 rupees to B, "because she went to England with his children." B is entitled to receive 1,000 rupees.

(h.) A, by his will, bequeaths to B the sum of 5,000 rupees, and also, in another part of the will, an annuity of 400 rupees. B is entitled to both legacies.

(i) A, by his will, bequeaths to B the sum of 5,000 rupees, and also bequeaths to him the sum of 5,000 rupees if he shall attain the age of 18. B is entitled absolutely to one sum of 5,000 rupees, and takes a contingent interest in another sum of 5,000 rupees.

89. A residuary legatee may be constituted by any words

Constitution of residuary that show an intention on the part of the legatee. • testator that the person designated shall take the surplus or residue of his property.

Illustrations.

(a) A makes her will, consisting of several testamentary papers, in one of which are contained the following words: "I think there will be something left, after all funeral expenses, &c, to give to B, now at school, towards equipping him to any profession he may hereafter be appointed to." B is constituted residuary legatee.

(b) A makes his will with the following passage at the end of it: "I believe there will be found sufficient in my banker's hands to defray and discharge my debts, which I hereby desire B to do, and keep the residue for her own use and pleasure." B is constituted the residuary legatee.

existence of such circumstances, they shall, as between the transferee on the one part and the transferor and other persons (if any) affected by the transfer on the other part, be deemed to have existed, if the transferee, after using reasonable care to ascertain the existence of such circumstances, has acted in good faith.

Illustration.

A, a Hindu widow, whose husband has left collateral heirs, alleging that the property held by her as such is insufficient for her maintenance, agrees, for purposes neither religious nor charitable, to sell a field, part of such property, to B. B satisfies himself by reasonable enquiry that the income of the property is insufficient for A's maintenance, and that the sale of the field is necessary, and, acting in good faith, buys the field from A. As between B on the one part and A and the collateral heirs on the other part, a necessity for the sale shall be deemed to have existed.

39 Where a third person has a right to receive maintenance,

Transfer where third person or a provision for advancement or marriage, from the profits of immoveable property, and such property is transferred with the intention of defeating such right, the right may be enforced against the transferee if he has notice of such intention, or if the transfer is gratuitous ; but not against a transferee for consideration and without notice of the right, nor against such property in his hands.

Illustration.

A, a Hindu, transfers Sultanpur to his sister-in-law B in lieu of her claim against him, for maintenance in virtue of his having become entitled to her deceased husband's property, and agrees with her that, if she is dispossessed of Sultanpur, A will transfer to her an equal area out of such of several other specified villages in his possession as she may elect. A sells the specified villages to C, who buys in good faith, without notice of the agreement. B is dispossessed of Sultanpur. She has no claim on the villages transferred to C.

40. Where, for the more beneficial enjoyment of his own

Burden of obligation imposing restriction on use of land, immoveable property, a third person has, independently of any interest in the immoveable property of another, or of any easement thereon, a right to restrain the enjoyment of the latter property, or to compel its enjoyment in a particular manner, or

where a third person is entitled to the benefit of an obligation or of obligation annexed to ownership, but not amounting to interest or easement, arising out of contract, and annexed to the ownership of immoveable property, but not amounting to an interest therein or easement thereon,

(e.) A sum of money is bequeathed to A on his completing his eighteenth year, and in case he should die before he completes his eighteenth year, to B. A completes his eighteenth year, and dies in the lifetime of the testator. The legacy to A lapses, and the bequest to B does not take effect.

(f.) The testator and the legatee perished in the same shipwreck. There is no evidence to show which died first. The legacy will lapse.

Legacy does not lapse if one of two joint legatees die before testator.

93. If a legacy be given to two persons jointly, and one of them die before the testator, the other legatee takes the whole.

Illustration

The legacy is simply to A and B. A dies before the testator. B takes the legacy.

94. But, where a legacy is given to legatees in words which show that the testator intended to give them distinct shares of it, then, if any legatee die before the testator, so much of the legacy as was intended for him shall fall into the residue of the testator's property.

Illustration

A sum of money is bequeathed to A, B, and C, to be equally divided among them. A dies before the testator. B and C shall only take so much as they would have had if A had survived the testator.

95. Where the share that lapses is a part of the general residuary bequest, and the share due bequeathed by the will, that share shall go as undisposed of.

Illustration.

The testator bequeaths the residue of his estate to A, B, and C, to be equally divided between them. A dies before the testator. His one-third of the residue goes as undisposed of.

96. Where a bequest shall have been made to any child* or other lineal descendant of the testator, and the legatee shall die in the lifetime of the testator, but any lineal descendant of his shall survive the testator, the bequest shall not lapse.

* See the Hindu Wills Act (XXI of 1870), s. 6 (which is reproduced as foot-note at p 23, *supra*)

Illustration.

A, a Hindu, who has separated from his father B, sells to C three fields, X, Y, and Z, representing that A is authorized to transfer the same. Of these fields, Z does not belong to A, it having been retained by B on the partition, but, on B's dying, A, as heir, obtains Z. C, not having rescinded the contract of sale, may require A to deliver Z to him

44. Where one of two or more co-owners of immoveable property, legally competent in that behalf, transfers his share of such property or any interest therein, the transferee acquires, as to such share or interest, and so far as is necessary to give effect to the transfer, the transferor's right to joint possession or other common or part-enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liabilities affecting, at the date of the transfer, the share or interest so transferred.

Where the transferee of a share of a dwelling-house belonging to an undivided family is not a member of the family, nothing in this section shall be deemed to entitle him to joint possession or other common or part-enjoyment of the house.

45. Where immoveable property is transferred for consideration to two or more persons, and such consideration is paid out of a fund belonging to them in common, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property identical, as nearly as may be, with the interests to which they were respectively entitled in the fund; and where such consideration is paid out of separate funds belonging to them respectively, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property in proportion to the shares of the consideration which they respectively advanced

In the absence of evidence as to the interests in the fund to which they were respectively entitled, or as to the shares which they respectively advanced, such persons shall be presumed to be equally interested in the property.

46. Where immoveable property is transferred for consideration by persons having distinct interests therein, the transferors are, in the absence of a contract to the contrary, entitled to share in the consideration equally where their interests in the property were of equal value, and, where such interests were of unequal value, proportionately to the value of their respective interests.

(d.) A sum of money was bequeathed to A for her life, and after her decease to the children* of B. At the death of the testator, B had two children living, C and D, and after that event, two children, E and F, were born to B. C and E died in the lifetime of A, C having made a will, E having made no will. A has died, leaving D and F surviving her. The legacy is to be divided into four equal parts, one of which is to be paid to the executor of C, one to D, one to the administrator of E, and one to F.

(e) A bequeaths one third of his lands to B for his life, and after his decease to the sisters of B. At the death of the testator, B had two sisters living, C and D, and after that event another sister E was born. C died during the life of B, D and E have survived B. One-third of A's lands belongs to D, E, and the representatives of C in equal shares.

(f) A bequeaths 1,000 rupees to B for life, and after his death equally among the children* of C. Up to the death of B, C had not had any child. The bequest after the death of B is void.

(g) A bequeaths 1,000 rupees to "all the children,* born or to be born," of B, to be divided among them at the death of C. At the death of the testator, B has two children living, D and E. After the death of the testator, but in the lifetime of C, two other children, F and G, are born to B. After the death of C, another child is born to B. The legacy belongs to D, E, F, and G, to the exclusion of the after-born child of B.

(h) A bequeaths a fund to the children* of B to be divided among them when the elder shall attain majority. At the testator's death, B has one child living, named C. He afterwards had two other children, named D and E. E died, but C and D were living when C attained majority. The fund belongs to C, D, and the representatives of E to the exclusion of any child who may be born to B after C's attaining majority.

PART XII.†

OF VOID BEQUESTS.

Bequest to person by particular description who is not in existence at testator's death.

99. Where a bequest is made to person by a particular description, and there is no person in existence at testator's death who answers the description, the bequest is void.

Exception.—If property is bequeathed to a person described as standing in a particular degree of kindred to a specified individual

* See the Hindu Wills Act (XXI. of 1870), s. 6 (which is reproduced as foot-note at p. 23, *supra*).

† Of Part XII., ss. 99 to 103 (both inclusive) apply to the wills of Hindus, Jains, Sikhs, and Buddhists in the Lower Provinces of Bengal and in the towns of Madras and Bombay—See the Hindu Wills Act (XXI. of 1870), ss. 2 and 6, as amended by the Probate and Administration Act (V. of 1881), s. 154.

any person of whom he, in good faith, held such property, notwithstanding it may afterwards appear that the person to whom such payment or delivery was made had no right to receive such rents or profits.

Illustration.

A lets a field to B at a rent of Rs 50, and then transfers the field to C. B, having no notice of the transfer, in good faith pays the rent to A. B is not chargeable with the rent so paid

51. When the transferee of immoveable property makes any improvements made by *bond-fide* holders under defective titles. improvement on the property, believing in good faith that he is absolutely entitled thereto, and he is subsequently evicted therefrom by any person having a better title, the transferee has a right to require the person causing the eviction either to have the value of the improvement estimated and paid or secured to the transferee, or to sell his interest in the property to the transferee at the then market-value thereof, irrespective of the value of such improvement.

The amount to be paid or secured in respect of such improvement shall be the estimated value thereof at the time of the eviction.

When, under the circumstances aforesaid, the transferee has planted or sown on the property crops which are growing when he is evicted therefrom, he is entitled to such crops, and to free ingress and egress to gather and carry them.

52 During the active prosecution in any Court having authority in British India, or established beyond the limits of British India by the Governor-General in Council, of a contentious suit or proceeding in which any right to immoveable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding, so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court, and on such terms as it may impose.

53. Every transfer of immoveable property, made with intent to defraud prior or subsequent transferees thereof for consideration, or co-owners or other persons having an interest in such property, or to defeat or delay the creditors of the transferor, is voidable at the option of any person so defrauded, defeated, or delayed.

(f) A makes his will, whereby he bequeaths a sum of money to B if B shall marry with the consent of A's executors. B marries during the lifetime of A, and A afterward, expresses his approbation of the marriage. A dies. The bequest to B takes effect.

(g) A legacy is bequeathed to A if he executes a certain document within a time specified in the will. The document is executed by A within a reasonable time but not within the time specified in the will. A has not performed the condition, and is not entitled to receive the legacy.

116. Where there is a bequest to one person, and a bequest to A, and, on the failure of the same thing to another, if the prior bequest shall fail, the second bequest shall take effect upon the failure of the prior bequest, although the failure may not have occurred in the manner contemplated by the testator.

Illustrations

(a) A bequeaths a sum of money to his own children surviving him, and, if they all die under 18, to B. A dies without having ever had a child. The bequest to B takes effect.

(b) A bequeaths a sum of money to B on condition that he shall execute a certain document within three months after A's death, and, if he should neglect to do so, to C. B dies in the testator's lifetime. The bequest to C takes effect.

117. Where the will shows an intention that the second bequest shall take effect on the failure of the first, in the event of the first bequest failing in a particular manner, the second bequest shall not take effect unless the prior bequest fails in that particular manner.

Illustration.

A makes a bequest to his wife, but, in case she should die in his lifetime, bequeaths to B that which he had bequeathed to her. A and his wife perish together under circumstances which may prove that she died before him. The bequest to B does not take effect.

118. A bequest may be made to any person with the condition superadded that, in the event of a specified uncertain event happening, the thing bequeathed shall go to another person; or that, in case a specified uncertain event shall not happen, the thing bequeathed shall go over to another person.

In each case the ulterior bequest is subject to the rules contained in sections 107, 108, 109, 110, 111, 112, 113, 114, 116, and 117.

and have the rights, mentioned in the rules next following, or such of them as are applicable to the property sold :—

(1.) The seller is bound—

- (a) to disclose to the buyer any material defect in the property of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover;
- (b) to produce to the buyer on his request for examination all documents of title relating to the property which are in the seller's possession or power;
- (c) to answer to the best of his information all relevant questions put to him by the buyer in respect to the property or the title thereto,
- (d) on payment or tender of the amount due in respect of the price, to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place;
- (e) between the date of the contract of sale and the delivery of the property, to take as much care of the property and all documents of title relating thereto which are in his possession as an owner of ordinary prudence would take of such property and documents;
- (f) to give, on being so required, the buyer or such person as he directs, such possession of the property as its nature admits;
- (g) to pay, all public charges and rent accrued due in respect of the property up to the date of the sale, the interest on all incumbrances on such property due on such date, and, except where the property is sold subject to incumbrances, to discharge all incumbrances on the property then existing.

(2.) The seller shall be deemed to contract with the buyer that the interest which the seller professes to transfer to the buyer subsists, and that he has power to transfer the same.

Provided that, where the sale is made by a person in a fiduciary character, he shall be deemed to contract with the buyer that the seller has done no act whereby the property is incumbered, or whereby he is hindered from transferring it.

Illustrations.

(a) An estate is bequeathed to A for his life, with a condition superadded that, if he shall not, on a given day, walk 100 miles in an hour, the estate shall go to B. The condition being void, A retains his estate as if no condition had been inserted in the will.

(b) An estate is bequeathed to A for her life, and, if she do not desert her husband, to B. A is entitled to the estate during her life as if no condition had been inserted in the will.

(c) An estate is bequeathed to A for life, and, if he marries, to the eldest son of B for life. B, at the date of the testator's death, had not had a son. The bequest over is void under section 92, and A is entitled to the estate during his life.

Bequest conditioned that it shall cease to have effect in case specified uncertain event shall happen or not happen.

121. A bequest may be made with the condition superadded that it shall cease to have effect in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.

Illustrations.

(a) An estate is bequeathed to A for his life, with a proviso that, in case he shall cut down a certain wood, the bequest shall cease to have any effect. A cuts down the wood; he loses his life-interest in the estate.

(b) An estate is bequeathed to A, provided that, if he marries under the age of 25 without the consent of the executors named in the will, the estate shall cease to belong to him. A marries under 25 without the consent of the executors. The estate ceases to belong to him.

(c) An estate is bequeathed to A provided that, if he shall not go to England within three years after the testator's death, his interest in the estate shall cease. A does not go to England within the time prescribed. His interest in the estate ceases.

(d.) An estate is bequeathed to A, with a proviso that, if she becomes a nun, she shall cease to have any interest in the estate. A becomes a nun. She loses her interest under the will.

(e.) A fund is bequeathed to A for life, and after his death to B, if B shall be then living, with a proviso that, if B shall become a nun, the bequest to her shall cease to have any effect. B becomes a nun in the lifetime of A. She thereby loses her contingent interest in the fund.

122. In order that a condition that a bequest shall cease to have effect may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of a bequest as contemplated by the 107th section.

person as he directs, provided that, where the property is sold free from incumbrances, the buyer may retain, out of the purchase-money, the amount of any incumbrances on the property existing at the date of the sale, and shall pay the amount so retained to the persons entitled thereto;

- (c) where the ownership of the property has passed to the buyer, to bear any loss arising from the destruction, injury, or decrease in value of the property not caused by the seller;
 - (d) where the ownership of the property has passed to the buyer, as between himself and the seller, to pay all public charges and rent which may become payable in respect of the property, the principal moneys due on any incumbrances subject to which the property is sold, and the interest thereon afterwards accruing due.
- (6.) The buyer is entitled—
- (a) where the ownership of the property has passed to him, to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof;
 - (b) unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming under him, with notice of the payment to the extent of the seller's interest in the property, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery, and for interest on such amount; and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract, or to obtain a decree for its rescission.

An omission to make such disclosures as are mentioned in this section, paragraph 1, clause (a), and paragraph 5, clause (a), is fraudulent.

56. Where two properties are subject to a common charge, and one of the properties is sold, the buyer is, as against the seller, in the absence of a contract to the contrary,

Sale of one of two properties subject to a common charge.

PART XVII.*

OF BEQUESTS WITH DIRECTIONS AS TO APPLICATION OR ENJOYMENT.

125. Where a fund is bequeathed absolutely to or for the benefit of any person, but the will contains a direction that it shall be applied or enjoyed in a particular manner, the legatee shall be entitled to receive the fund as if the will had contained no such direction.

Direction that funds be employed in particular manner following absolute bequest of same to or for benefit of any person.

Illustration.

A sum of money is bequeathed towards purchasing a country residence for A, or to purchase an annuity for A, or to purchase a commission in the army for A, or to place A in any business. A chooses to receive the legacy in money. He is entitled to do so.

126. Where a testator absolutely bequeaths a fund, so as to sever it from his own estate, but directs that the mode of enjoyment of it by the legatee shall be restricted so as to secure a specified benefit for the legatee, if that benefit cannot be obtained for the legatee, the fund belongs to him as if the will had contained no such direction.

Direction that mode of enjoyment of absolute bequest is to be restricted, to secure specified benefit for legatee

Illustrations.

(a.) A bequeaths the residue of his property to be divided equally among his daughters, and directs that the shares or the daughters shall be settled upon themselves respectively for life, and be paid to their children after their death. All the daughters die unmarried. The representatives of each daughter are entitled to her share of the residue.

(b.) A directs his trustees to raise a sum of money for his daughter, and he then directs that they shall invest the fund, and pay the income arising from it to her during her life, and divide the principal among her children after her death. The daughter dies without having ever had a child. Her representatives are entitled to the fund.

127. Where a testator does not absolutely bequeath a fund, so as to sever it from his own estate, but gives it for certain purposes, and part of those purposes cannot be fulfilled, the

Bequest of fund for certain purposes, some of which cannot be fulfilled.

* Part XVII. applies to the wills of Hindus, Jains, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay.—See the Hindu Wills Act (XXI. of 1870), s. 2.

(d) An appeal shall lie from any declaration, order, or direction under this section as if the same were a decree.

(e) In this section "Court" means (1) a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction; (2) the Court of a District Judge within the local limits of whose jurisdiction the property or any part thereof is situate; (3) any other Court which the Local Government may, from time to time, by notification in the official Gazette, declare to be competent to exercise the jurisdiction conferred by this section.

CHAPTER IV.

OF MORTGAGES OF IMMOVEABLE PROPERTY AND CHARGES.

58. (a) A mortgage is the transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.

"Mortgage," "mortgagee," "mortgage-money," and "mortgage-deed" defined.

The transferor is called a mortgagor, the transferee a mortgagee; the principal money and interest of which payment is secured for the time being are called the mortgage-money; and the instrument (if any) by which the transfer is effected is called a mortgage-deed.

(b) Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money, and agrees, expressly or impliedly, that, in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold, and the proceeds of sale to be applied, so far as may be necessary, in payment of the mortgage-money, the transaction is called a simple mortgage, and the mortgagee a simple mortgagee.

Mortgage by conditional sale.

(c) Where the mortgagor ostensibly sells the mortgaged property—

on condition that, on default of payment of the mortgage-money on a certain date, the sale shall become absolute. or

PART XIX.*

OF SPECIFIC LEGACIES.

129. Where a testator bequeaths to any person a specified part of his property which is distinguished from all other parts of his property, the legacy is said to be specific.

Illustrations.

(a.) A bequeaths to B—

- "the diamond-ring presented to him by C :"
- "his gold chain ;"
- "a certain bale of wool :"
- "a certain piece of cloth ."
- "all his household-goods, which shall be in or about his dwelling-house in M Street in Calcutta at the time of his death :"
- "the sum of 1,000 rupees in a certain chest ."
- "the debt which B owes him ."
- "all his bills, bonds, and securities belonging to him lying in his lodgings in Calcutta ."
- "all his furniture in his house in Calcutta ."
- "all his goods on board a certain ship then lying in the river Hugli :"
- "2,000 rupees which he has in the hands of C :"
- "the money due to him on the bond of D ."
- "his mortgage on the Rampur factory :"
- "one-half of the money owing to him on his mortgage of Rampur factory :"
- "1,000 rupees being part of a debt due to him from C :"
- "his capital stock of 1,000^l in East India Stock ."
- "his promissory notes of the Government of India for 10,000 rupees in their four per cent loan :"
- "all such sums of money as his executors may, after his death, receive in respect of the debt due to him from the insolvent firm of D and Company :"
- "all the wine which he may have in his cellar at the time of his death "
- "such of his horses as B may select ."
- "all his shares in the Bank of Bengal "
- "all the shares in the Bank of Bengal which he may possess at the time of his death ."
- "all the money which he has in the 5½ per cent. loan of the Government of India :"
- "all the Government securities he shall be entitled to at the time of his decease ."

* Part XIX applies to the wills of Hindus, Jains, Sikhs, and Buddhists in the Lower Provinces of Bengal and in the towns of Madras and Bombay.—See the Hindu Wills Act (XXI. of 1870), s. 2.

Rights and Liabilities of Mortgagor.

60. At any time after the principal money has become payable, the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage-money, to require the mortgagee (a) to deliver the mortgage-deed, if any, to the mortgagor; (b) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and (c), at the cost of the mortgagor, either to re-transfer the mortgaged property to him, or to such third person as he may direct, or to execute and (where the mortgage has been effected by a registered instrument) to have registered an acknowledgment in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished:

Provided that the right conferred by this section has not been extinguished by act of the parties, or by order of a Court.

The right conferred by this section is called a right to redeem, and a suit to enforce it is called a suit for redemption.

Nothing in this section shall be deemed to render invalid any provision to the effect that, if the time fixed for payment of the principal money has been allowed to pass, or no such time has been fixed, the mortgagee shall be entitled to reasonable notice before payment or tender of such money.

Nothing in this section shall entitle a person interested in a share only of the mortgaged property to redeem his own share only, on payment of a proportionate part of the amount remaining due on the mortgage, except where a mortgagee, or, if there are more mortgagees than one, all such mortgagees, has or have acquired, in whole or in part, the share of a mortgagor.

61. A mortgagor seeking to redeem any one mortgage shall, in the absence of a contract to the contrary, be entitled to do so without paying any money due under any separate mortgage made by him, or by any person through whom he claims, on property other than that comprised in the mortgage which he seeks to redeem.

Illustration.

A, the owner of farms Z and Y, mortgages Z to B for Rs. 1,000. A afterwards mortgages Y to B for Rs. 1,000, making no stipulation as to any additional charge on Z. A may institute a suit for the redemption of the mortgage on Z alone.

Illustration.

A bequeaths to B—

" 10,000 rupees of his funded property, "

" 10,000 rupees of his property now invested in shares of the East Indian Railway Company, "

" 10,000 rupees, at present secured by mortgage of Rampur factory "

No one of these legacies is specific.

131. Where a bequest is made, in general terms, of a certain amount of any kind of stock, the legacy is not specific merely because the testator was, at the date of his will, possessed of stock of the specified kind, to an equal or greater amount than the amount bequeathed.

Illustration.

A bequeaths to B 5,000 rupees five per cent. Government securities. A had, at the date of the will, five per cent. Government securities for 5,000 rupees :

The legacy is not specific

132. A money-legacy is not specific merely because the will directs its payment to be postponed until some part of the property of the testator shall have been reduced to a certain form, or remitted to a certain place.

Illustration

A bequeaths to B 10,000 rupees, and directs that this legacy shall be paid as soon as A's property in India shall be realized in England :

The legacy is not specific.

133. Where a will contains a bequest of the residue of the testator's property along with an enumeration of some items of property not previously bequeathed, the articles enumerated shall not be deemed to be specifically bequeathed.

134. Where property is specifically bequeathed to two or more persons in succession, it shall be retained in the form in which the testator left it, although it may be of such a nature that its value is continually decreasing.

Implied contracts by mortgagor.

65. In the absence of a contract to the contrary, the mortgagor shall be deemed to contract with the mortgagee—

- (a) that the interest which the mortgagor professes to transfer to the mortgagee subsists, and that the mortgagor has power to transfer the same ;
- (b) that the mortgagor will defend, or, if the mortgagee be in possession of the mortgaged property, enable him to defend, the mortgagor's title thereto ;
- (c) that the mortgagor will, so long as the mortgagee is not in possession of the mortgaged property, pay all public charges accruing due in respect of the property ;
- (d) and, where the mortgaged property is a lease for a term of years, that the rent payable under the lease, the conditions contained therein, and the contracts binding on the lessee, have been paid, performed, and observed down to the commencement of the mortgage ; and that the mortgagor will, so long as the security exists, and the mortgagee is not in possession of the mortgaged property, pay the rent reserved by the lease or, if the lease be renewed, the renewed lease, perform the conditions contained therein, and observe the contracts binding on the lessee, and indemnify the mortgagee against all claims sustained by reason of the non-payment of the said rent or the non-performance or non-observance of the said conditions and contracts ;
- (e) and, where the mortgage is a second or subsequent incumbrance on the property, that the mortgagor will pay the interest from time to time accruing due on each prior incumbrance as and when it becomes due, and will, at the proper time, discharge the principal money due on such prior incumbrance.

Nothing in clause (c), or in clause (d), so far as it relates to the payment of future rent, applies in the case of a usufructuary mortgage.

The benefit of the contracts mentioned in this section shall be annexed to, and shall go with, the interest of the mortgagee as such, and may be enforced by every person in whom that interest is, for the whole or any part thereof, from time to time, vested.

Explanation.—The distinction between a specific legacy and a demonstrative legacy consists in this that,

where specified property is given to the legatee, the legacy is specific :

where the legacy is directed to be paid out of a specified property, it is demonstrative.

Illustrations.

(a.) A bequeaths to B 1,000 rupees, being part of a debt due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. The legacy to B is specific, the legacy to C is demonstrative.

(b.) A bequeaths to B—

“ten bushels of the corn which shall grow in his field of Greenacre,”

“80 chests of the indigo which shall be made at his factory of Rampur,”

“10,000 rupees out of his five per cent promissory notes of the Government of India ;”

an annuity of 500 rupees “from his funded property ;”

“1,000 rupees out of the sum of 2,000 rupees due to him by C.”

A bequeaths to B an annuity, and directs it to be paid out of the rents arising from his taluq of Ramnagar .

A bequeaths to B—

“10,000 rupees out of his estate at Ramnagar,” or charges it on his estate at Ramnagar ,”

“10,000 rupees, being his share of the capital embarked in a certain business.”

Each of these bequests is demonstrative.

133. Where a portion of a fund is specifically bequeathed,

and a legacy is directed to be paid out of the same fund, the portion specifically bequeathed shall first be paid to the legatee, and the demonstrative legacy shall be paid out of the residue of the fund, and, so far as the residue shall be deficient, out of the general assets of the testator.

Order of payment when legacy directed to be paid out of fund the subject of specific legacy.

Illustration.

A bequeaths to B 1,000 rupees, being part of a debt due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. The debt due to A from W is only 1,500 rupees, of these 1,500 rupees, 1,000 rupees belong to B, and 500 rupees are to be paid to C. C is also to receive 500 rupees out of the general assets of the testator.

Right to sue for mortgage-money.

68. The mortgagee has a right to sue the mortgagor for the mortgage-money in the following cases only—

- (a) where the mortgagor binds himself to repay the same ;
- (b) where the mortgagee is deprived of the whole or part of his security by, or in consequence of, the wrongful act or default of the mortgagor ;
- (c) where, the mortgagee being entitled to possession of the property, the mortgagor fails to deliver the same to him, or to secure the possession thereof to him without disturbance by the mortgagor or any other person.

Where, by any cause other than the wrongful act or default of the mortgagor or mortgagee, the mortgaged property has been wholly or partially destroyed, or the security is rendered insufficient as defined in section 66, the mortgagee may require the mortgagor to give him, within a reasonable time, another sufficient security for his debt, and, if the mortgagor fails so to do, may sue him for the mortgage-money.

69. A power conferred by the mortgage-deed on the mortgagee, or on any person on his behalf, to sell or concur in selling, in default of payment of the mortgage-money, the mortgaged property or any part thereof, without the intervention of the Court, is valid in the following cases, " and in no others"^{*} (namely)—

- (a) where the mortgage is an English mortgage, and neither the mortgagor nor the mortgagee is a Hindu, Muhammadan, or Buddhist, " or a member of any other race, sect, tribe, or class, from time to time specified in this behalf by the Local Government, with the previous sanction of the Governor-General in Council, in the local official Gazette ;"^{*}
- (b) where the mortgagee is the Secretary of State for India in Council ;
- (c) where the mortgaged property or any part thereof is situate within the town of Calcutta, Madras, Bombay, Karachi, ' Rangoon, Moulmein, Bassein, or Akyab."[†]

^{*} The words quoted above in s. 69, para. 1, and those in cl. (a), have been inserted by the Transfer of Property Act (1882) Amendment Act (III. of 1885), s. 5.

[†] In cl. (c) of s. 69, the words quoted have been substituted for the words, " or Rangoon," by Act VI. of 1904, s. 4.

141. Where the thing specifically bequeathed is the right to receive something of value from a third party, and the testator himself receives it, the bequest is adeemed.

Ademption of specific bequest of right to receive something from third party.

Illustrations.

(a) A bequeaths to B—

- "the debt which C owes him ;"
- "2 000 rupees which he has in the hands of D ;"
- "the money due to him on the bond of E ;"
- "his mortgage on the Rampur factory."

All these debts are extinguished in A's lifetime, some with and some without his consent. All the legacies are adeemed.

(b) A bequeaths to B "his interest in certain policies of life assurance." A in his lifetime receives the amount of the policies. The legacy is adeemed.

142. The receipt by the testator of a part of an entire thing specifically bequeathed shall operate as an ademption of the legacy to the extent of the sum so received.

Ademption *pro tanto* by testator's receipt of part of entire thing specifically bequeathed..

Illustration.

A bequeaths to B "the debt due to him by C." The debt amounts to 10,000 rupees. C pays to A 5,000 rupees, the one half of the debt. The legacy is revoked by ademption so far as regards the 5,000 rupees received by A.

143. If a portion of an entire fund or stock be specifically bequeathed, the receipt by the testator of a portion of the fund or stock shall operate as an ademption only to the extent of the amount so received; and the residue of the fund or stock shall be applicable to the discharge of the specific legacy.

Ademption *pro tanto* by testator's receipt of portion of entire fund of which portion has been specifically bequeathed.

Illustration.

A bequeaths to B one-half of the sum of 10,000 rupees due to him from W. A, in his lifetime, receives 5,000 rupees, part of the 10,000 rupees. The 4,000 rupees which are due from W to A at the time of his death belong to B under the specific bequest.

70. If, after the date of a mortgage, any accession is made to the mortgaged property, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to such accession.

Illustrations.

(a) A mortgages to B a certain field bordering on a river. The field is increased by alluvion. For the purposes of his security, B is entitled to the increase.

(b) A mortgages a certain plot of building land to B, and afterwards erects a house on the plot. For the purposes of his security, B is entitled to the house as well as the plot.

71. When the mortgaged property is a lease for a term of years, and the mortgagor obtains a renewal of the lease, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to the new lease.

72. When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property, he may spend such money as is necessary—

- (a) for the due management of the property and the collection of the rents and profits thereof;
- (b) for its preservation from destruction, forfeiture, or sale;
- (c) for supporting the mortgagor's title to the property;
- (d) for making his own title thereto good against the mortgagor; and,
- (e) when the mortgaged property is a renewable lease-hold, for the renewal of the lease;

and may, in the absence of a contract to the contrary, add such money to the principal money at the rate of interest payable on the principal, and, where no such rate is fixed, at the rate of nine per cent. per annum.

Where the property is, by its nature, insurable, the mortgagee may also, in the absence of a contract to the contrary, insure and keep insured against loss or damage by fire the whole or any part of such property, and the premiums paid for any such insurance shall be a charge on the mortgaged property, in addition to the principal money, with the same priority and with interest at the

147. A specific bequest of goods under a description con-

necting them with a certain place is not adeemed by reason that they have been removed from such place from any temporary cause, or by fraud, or without the knowledge or sanction of the testator.

Illustrations.

A bequeaths to B "all his household goods which shall be in or about his dwelling-house in Calcutta at the time of his death." The goods are removed from the house to save them from fire. A dies before they are brought back :

A bequeaths to B "all his household goods which shall be in or about his dwelling-house in Calcutta at the time of his death." During A's absence upon a journey, the whole of the goods are removed from the house. A dies without having sanctioned their removal :

Neither of these legacies is adeemed.

148. The removal of the thing bequeathed from the place in

which it is stated in the will to be situated does not constitute an ademption where the place is only referred to in order to complete the description of what the testator meant to bequeath.

Illustrations.

A bequeaths to B all the bills, bonds, and other securities for money belonging to him, then lying in his lodgings in Calcutta. At the time of his death, these effects had been removed from his lodgings in Calcutta :

A bequeaths to B all his furniture then in his house in Calcutta. The testator has a house at Calcutta and another at Chinsurah, in which he lives alternately, being possessed of one set of furniture only which he removes with himself to each house. At the time of his death, the furniture is in the house at Chinsurah :

A bequeaths to B all his goods on board a certain ship then lying in the river Hugli. The goods are removed by A's directions to a warehouse, in which they remain at the time of A's death :

No one of these legacies is revoked by ademption.

149. Where the thing bequeathed is not the right to receive

something of value from a third person, but the money or other commodity which shall be received from the third person by the testator himself or by his representatives, the receipt of such sum of money or other commodity by the testator shall not constitute an ademption ;

- (b) he must use his best endeavours to collect the rents and profits thereof;
- (c) he must, in the absence of a contract to the contrary, out of the income of the property, pay the Government revenue, all other charges of a public nature accruing due in respect thereof during such possession, and any arrears of rent in default of payment of which the property may be summarily sold;
- (d) he must, in the absence of a contract to the contrary, make such necessary repairs of the property as he can pay for out of the rents and profits thereof after deducting from such rents and profits the payments mentioned in clause (c) and the interest on the principal money;
- (e) he must not commit any act which is destructive or permanently injurious to the property;
- (f) where he has insured the whole or any part of the property against loss or damage by fire, he must, in case of such loss or damage, apply any money which he actually receives under the policy, or so much thereof as may be necessary, in reinstating the property, or, if the mortgagor so directs, in reduction or discharge of the mortgage-money;
- (g) he must keep clear, full, and accurate accounts of all sums received and spent by him as mortgagee, and, at any time during the continuance of the mortgage, give the mortgagor, at his request and cost, true copies of such accounts and of the vouchers by which they are supported;
- (h) his receipts from the mortgaged property, or, where such property is personally occupied by him, a fair occupation-rent in respect thereof, shall, after deducting the expenses mentioned in clauses (c) and (d) and interest thereon, be debited against him in reduction of the amount (if any) from time to time due to him on account of interest on the mortgage-money, and, so far as such receipts exceed any interest due, in reduction or discharge of the mortgage-money; the surplus (if any) shall be paid to the mortgagor;

153. Where stock specifically bequeathed is sold, and an equal quantity of the same stock is afterwards purchased, and belongs to the testator at his death, the legacy is not adeemed.

PART XXII.*

OF THE PAYMENT OF LIABILITIES IN RESPECT OF THE SUBJECT OF A BEQUEST.

154. Where property specifically bequeathed is subject, at the death of the testator, to any pledge, lien, or incumbrance created by the testator himself, or by any person under whom he claims, then, unless a contrary intention appears by the will, the legatee, if he accepts the bequest, shall accept it subject to such pledge or incumbrance, and shall (as between himself and the testator's estate) be liable to make good the amount of such pledge or incumbrance.

A contrary intention shall not be inferred from any direction which the will may contain for the payment of the testator's debts generally.

Explanation.—A periodical payment in the nature of land-revenue or in the nature of rent is not such an incumbrance as is contemplated by this section.

Illustrations.

(a.) A bequeaths to B the diamond-ring given him by C. At A's death, the ring is held in pawn by D, to whom it has been pledged by A. It is the duty of A's executors, if the state of the testator's assets will allow them, to allow B to redeem the ring.

(b.) A bequeaths to B a zamindari which at A's death, is subject to a mortgage for 10,000 rupees, and the whole of the principal sum together with interest to the amount of 1,000 rupees is due, at A's death. B if he, accepts the bequest, accepts it subject to this charge, and is liable, as between himself and A's estate, to pay the sum of 11,000 rupees thus due.

Completion of testator's title to things bequeathed to be at cost of his estate.

155. Where anything is to be done to complete the testator's title to the thing bequeathed, it is to be done at the cost of the testator's estate.

* Part XXII. applies to the wills of Hindus, Jains, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay.—See the Hindu Wills Act (XXI. of 1870), s. 2.

date of the second mortgage, the balance due to B & Co. does not exceed Rs 5,000 B & Co subsequently advance to A sums making the balance of the account against him exceed the sum of Rs. 10,000 B & Co. are entitled, to the extent of Rs 10 000, to priority over C.

80. No mortgagee paying off a prior mortgage, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his original security. And, except in the case provided for by section 79, no mortgagee making a subsequent advance to the mortgagor, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his security for such subsequent advance.

Tacking abolished.

Marshalling and Contribution.

81. If the owner of two properties mortgages them both to one person, and then mortgages one of the properties to another person who has not notice of the former mortgage, the second mortgagee is, in the absence of a contract to the contrary, entitled to have the debt of the first mortgagee satisfied out of the property not mortgaged to the second mortgagee, so far as such property will extend, but not so as to prejudice the rights of the first mortgagee, or of any other person having acquired for valuable consideration an interest in either property.

82. Where several properties, whether of one or several owners, are mortgaged to secure one debt, such properties are, in the absence of a contract to the contrary, liable to contribute rateably to the debt secured by the mortgage, after deducting from the value of each property the amount of any other incumbrance to which it is subject at the date of the mortgage.

Where, of two properties belonging to the same owner, one is mortgaged to secure one debt, and then both are mortgaged to secure another debt, and the former debt is paid out of the former property, each property is, in the absence of a contract to the contrary, liable to contribute rateably to the latter debt after deducting the amount of the former debt from the value of the property out of which it has been paid.

Nothing in this section applies to a property liable under section 81 to the claim of the second mortgagee.

(d) A bequeaths to B his shares in a joint-stock company. B accepts the bequest. Afterwards the affairs of the company are wound up, and each shareholder is called upon for contribution. The amount of the contribution must be borne by the legatee.

(e) A is the owner of ten shares in a railway company. At a meeting held during his lifetime a call is made of 3*l.* per share payable by three instalments. A bequeaths his shares to B and dies between the day fixed for the payment of the first and the day fixed for the payment of the second instalment, and without having paid the first instalment. A's estate must pay the first instalment, and B, if he accept the legacy, must pay the remaining instalments.

PART XXIII.*

OF BEQUESTS OF THINGS DESCRIBED IN GENERAL TERMS.

158. If there be a bequest of something described in general terms, the executor must purchase for the legatee what may reasonably be considered to answer the description.

Illustrations.

(a) A bequeaths to B a pair of carriage-horses, or a diamond ring. The executor must provide the legatee with such articles if the state of the assets will allow it.

(b) A bequeaths to B "his pair of carriage-horses." A had no carriage-horses at the time of his death. The legacy fails.

PART XXIV.†

OF BEQUESTS OF THE INTEREST OR PRODUCE OF A FUND.

159. Where the interest or produce of a fund is bequeathed to any person, and the will affords no indication or an intension that the enjoyment of the bequest should be of limited duration, the principal as well as the interest shall belong to the legatee.

Illustrations.

(a.) A bequeaths to B the interest of his five per cent. promissory notes of the Government of India. There is no other clause in the will affecting

* Parts XXIII. and XXIV apply to the wills of Hindus, Jains, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay.—See the Hindu Wills Act (XXI of 1870), s. 2

- (a) Any person (other than the mortgagee of the interest sought to be redeemed) having any interest in, or charge upon, the property ;
- (b) any person having any interest in, or charge upon, the right to redeem the property ;
- (c) any surety for the payment of the mortgage-debt or any part thereof ;
- (d) the guardian of the property of a minor mortgagor on behalf of such minor ;
- (e) the committee or other legal curator of a lunatic or idiot mortgagor on behalf of such lunatic or idiot ;
- (f) the judgment-creditor of the mortgagor, when he has obtained execution by attachment of the mortgagor's interest in the property ;
- (g) a creditor of the mortgagor who has, in a suit for the administration of his estate, obtained a decree for sale of the mortgaged property.

92. to 94.—[*Repealed by Act V. of 1908.*]

95. Where one of several mortgagors redeems the mort-
Charge of one of several gaged property, and obtains possession
co-mortgagors who redeems. thereof, he has a charge on the share of
each of the other co-mortgagors in the property for his proportion
of the expenses properly incurred in so redeeming and obtaining
possession.

96, 97.—[*Repealed by Act V. of 1908.*]

Anomalous Mortgages.

98. In the case of a mortgage, not being a simple mortgage,
Mortgage not described in a mortgage by conditional sale, usufruc-
section 58, clauses (b), (c), tuary mortgage, or an English mort-
(d), and (e), gage, or a combination of the first and
third, or the second and third, of such forms, the rights and
liabilities of the parties shall be determined by their contract as
evidenced in the mortgage-deed, and, so far as such contract does
not extend, by local usage.

99.—[*Repealed by Act V. of 1908.*]

Illustrations.

(a.) A by his will directs that his executors shall, out of his property, purchase an annuity of 1,000 rupees for B. B is entitled, at his option, to have an annuity of 1,000 rupees for his life purchased for him, or to receive such a sum as will be sufficient for the purchase of such an annuity.

(b.) A bequeaths a fund to B for his life, and directs that, after B's death, it shall be laid out in the purchase of an annuity for C. B and C survive the testator. C dies in B's lifetime. On B's death the fund belongs to the representative of C.

162. Where an annuity is bequeathed, but the assets of the testator are not sufficient to pay all the legacies given by the will, the annuity shall abate in the same proportion as the other pecuniary legacies given by the will.

163. Where there is a gift of an annuity and a residuary gift, the whole of the annuity is to be satisfied before any part of the residue is paid to the residuary legatee, and, it necessary, the capital of the testator's estate shall be applied for that purpose.

PART XXVI.*

OF LEGACIES TO CREDITORS AND PORTIONERS.

164. Where a debtor bequeaths a legacy to his creditor, and it does not appear from the will that the legacy is meant as a satisfaction of the debt, the creditor shall be entitled to the legacy as well as to the amount of the debt.

165. Where a parent, who is under obligation by contract to provide a portion for a child, fails to do so, and afterwards bequeaths a legacy to the child, and does not intimate by his will that the legacy is meant as a satisfaction of the portion, the child shall be entitled to receive the legacy as well as the portion.

* Part XXVI. applies to the wills of Hindus, Jainas, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay.—See the Hindu Wills Act (XXI. of 1870), s. 2.

deposit in such Court as last aforesaid the amount sought to be tendered, and such deposit shall have the effect of a tender of such amount.

103. Where, under the provisions of this Chapter, a notice is

Notice, &c, to or by person incompetent to contract. to be served on or by, or a tender or deposit made or accepted or taken out of Court by, any person incompetent to contract,* such notice may be served, or tender or deposit made, accepted, or taken, by the legal curator of the property of such person; but, where there is no such curator, and it is requisite or desirable, in the interests of such person, that a notice should be served, or a tender or deposit made, under the provisions of this Chapter, application may be made to any Court in which a suit might be brought for the redemption of the mortgage to appoint a guardian *ad litem* for the purpose of serving or receiving service of such notice, or making or accepting such tender, or making or taking out of Court such deposit, and for the performance of all consequential acts which could or ought to be done by such person if he were competent to contract; and the provisions of Chapter XXXI. of the Code of Civil Procedure† shall so far as may be, apply to such application, and to the parties thereto, and to the guardian appointed thereunder.

104. The High Court may, from time to time, make rules

Power to make rules consistent with this Act for carrying out, in itself and in the Court of Civil Judicature subject to its superintendence, the provisions contained in this Chapter.

CHAPTER V.

OF LEASES OF IMMOVEABLE PROPERTY.

105. A lease of immoveable property is a transfer of a right

"Lease" defined to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service, or any other thing of value, to be rendered,

* As to persons competent to contract, see ss 11 and 12 of the Indian Contract Act (IX of 1872)

† This reference to Ch. XXXI of the Civil Procedure Code (Act X. of 1877) should now be read as applying to Ch. XXXI. of the Civil Procedure Code (Act XIV. of 1882).—See s. 3 of the latter Act.

Illustrations.

(a.) The farm of Sultanpur was the property of C. A bequeathed it to B, giving a legacy of 1,000 rupees to C. C has elected to retain his farm of Sultanpur, which is worth 800 rupees. C forgoes his legacy of 1,000 rupees, of which 800 rupees goes to B, and the remaining 200 rupees falls into the residuary bequest, or devolves according to the rules of intestate succession, as the case may be.

(b.) A bequeaths an estate to B in case B's elder brother (who is married and has children) shall leave no issue living at his death. A also bequeaths to C a jewel, which belongs to B. B must elect to give up the jewel, or to lose the estate.

(c.) A bequeaths to B 1,000 rupees, and to C an estate which will, under a settlement, belong to B if his elder brother (who is married and has children) shall leave no issue living at his death. B must elect to give up the estate, or to lose the legacy.

(d.) A, a person of the age of 18, domiciled in British India, but owning real property in England, to which C is heir-at-law, bequeaths a legacy to C, and, subject thereto, devises and bequeaths to B "all his property whatsoever and wheresoever," and dies under 21. The real property in England does not pass by the will. C may claim his legacy without giving up the real property in England.

170. A bequest for a man's benefit is, for the purpose of election, the same thing as a bequest made to himself.

Bequest for man's benefit how regarded for purpose of election.

Illustration.

The farm of Sultanpur Khurd being the property of B, A bequeathed it to C; and bequeathed another farm, called Sultanpur Buzurg, to his own executors, with a direction that it should be sold, and the proceeds applied in payment of B's debts. B must elect whether he will abide by the will, or keep his farm of Sultanpur Khurd in opposition to it.

171. A person taking no benefit directly under the will, but deriving a benefit under it indirectly, is not put to his election.

Person deriving benefit indirectly not put to election.

Illustration.

The lands of Sultanpur are settled upon C for life, and, after his death, upon D, his only child. A bequeaths the lands of Sultanpur to B, and 1,000 rupees to C. C dies intestate shortly after the testator, and without having made any election. D takes out administration to C, and as administrator elects on behalf of C's estate to take under the will. In that capacity he receives the legacy of 1,000 rupees, and accounts to B for the rents of the lands of Sultanpur which accrued after the death of the testator, and before the death of C. In his individual character he retains the lands of Sultanpur in opposition to the will.

class of such leases, may be made by unregistered instrument or by oral agreement without delivery of possession.”*

108. In the absence of a contract or local usage to the contrary, the lessor and the lessee of immovable property, as against one another respectively, possess the rights and are subject to the liabilities mentioned in the rules next following or such of them as are applicable to the property leased:—

A.—Rights and Liabilities of the Lessor.

(a) The lessor is bound to disclose to the lessee any material defect in the property, with reference to its intended use, or of which the former is, and the latter is not, aware, and which the latter could not with ordinary care discover:

(b) the lessor is bound, on the lessee's request, to put him in possession of the property:

(c) the lessor shall be deemed to contract with the lessee that, if the latter pays the rent reserved by the lease, and performs the contracts binding on the lessee, he may hold the property during the time limited by the lease without interruption.

The benefit of such contract shall be annexed to, and go with, the lessee's interest as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

B.—Rights and Liabilities of the Lessee.

(d) If, during the continuance of the lease, any accession is made to the property, such accession (subject to the law relating to alluvion for the time being in force) shall be deemed to be comprised in the lease:

(e) if, by fire, tempest, or flood, or violence of an army or of a mob, or other irresistible force, any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, the lease shall, at the option of the lessee, be void:

* In s. 107, the two concluding paragraphs quoted have been substituted for the original second paragraph thereof by Act VI. of 1904, s. 5.

having been informed by A's executors that the residue will amount to 5,000 rupees, allows C to take possession of Sultanpur. He afterwards discovers that the residue does not amount to more than 500 rupees. B has not confirmed the bequest of the estate of Sultanpur to C

174. Such knowledge or waiver of inquiry shall, in the absence of evidence to the contrary, be presumed if the legatee has enjoyed for two years the benefits provided for him by the will without doing any act to express dissent.

175. Such knowledge or waiver of inquiry may be inferred from any act of the legatee which renders it impossible to place the persons interested in the subject-matter of the bequest in the same condition as if such act had not been done.

Illustration.

A bequeaths to B an estate to which C is entitled, and to C a coal-mine. C takes possession of the mine, and exhausts it. He has thereby confirmed the bequest of the estate to B.

176. If the legatee shall not, within one year after the death of the testator, signify to the testator's representatives his intention to confirm or to dissent from the will, the representatives shall, upon the expiration of that period, require him to make his election;

and, if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the will.

177. In case of disability, the election shall be postponed until the disability, ceases, or until the election shall be made by some competent authority.

(m) the lessee is bound to keep, and, on the termination of the lease, to restore, the property in as good condition as it was in at the time when he was put in possession, subject only to the changes caused by reasonable wear and tear or irresistible force, and to allow the lessor and his agents, at all reasonable times during the term, to enter upon the property, and inspect the condition thereof, and give or leave notice of any defect in such condition; and when such defect has been caused by any act or default on the part of the lessee, his servants, or agents, he is bound to make it good within three months after such notice has been given or left:

(n) if the lessee becomes aware of any proceeding to recover the property or any part thereof, or of any encroachment made upon, or any interference with the lessor's rights concerning such property, he is bound to give, with reasonable diligence, notice thereof to the lessor:

(o) the lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were his own; but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell timber, pull down or damage buildings, work mines or quarries not open when the lease was granted, or commit any other act which is destructive or permanently injurious thereto

(p) he must not, without the lessor's consent, erect on the property any permanent structure except for agricultural purposes:

(q) on the determination of the lease, the lessee is bound to put the lessor into possession of the property.

109. If the lessor transfers the property leased, or any part

Rights of lessor's trans-
feree. thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights, and, if the lessee so elects, be subject to all the liabilities of the lessor as to the property or part transferred so long as he is the owner of it; but the lessor shall not, by reason only of such transfer, cease to be subject to any of the liabilities imposed upon him by the lease unless the lessee elects to treat the transferee as the person liable to him:

Provided that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee, not having reason to believe that such transfer has been made, pays rent to the lessor, the lessee shall not be liable to pay such rent over again to the transferee.

of A's death. A dies of the illness during which he delivered these articles. B is entitled to the trunk and its contents, or to A's goods of bulk in the warehouse

(c) A, being ill, and in expectation of death, puts aside certain articles in separate parcels and marks upon the parcels respectively the names of B and C. The parcels are not delivered during the life of A. A dies of the illness during which he set aside the parcels. B and C are not entitled to the contents of the parcels.

PART XXIX.*

OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.

179. The executor or administrator, as the case may be, of a deceased person is his legal representative for all purposes, and all the property† of the deceased person vests in him as such.

180. When a will has been proved and deposited in a Court of competent jurisdiction, situated beyond the limits of the province, whether in the British dominions or in a foreign country, and a properly authenticated copy of the will is produced, letters of administration may be granted with a copy of such copy annexed.

Probate only to appointed executor.

181. Probate can be granted only to an executor appointed by the will.

Appointment, express or implied.

182. The appointment may be express or by necessary implication.‡

* Of Part XXIX, s. 187 applies to the wills of Hindus, Jainas, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay—See the Hindu Wills Act (XXI of 1870), s. 2, as amended by the Probate and Administration Act (V. of 1881), s. 154.

As to grants of letters of administration and probates to the Administrator-General, see Act II. of 1874 ss. 14-33.

Nothing in Act X. of 1865 is to be taken to supersede or affect the rights or duties and privileges of the Administrator-General.—See *ibid.*, s. 66.

† This does not include property vested in the deceased as executor or administrator under Act X of 1865.—12 Ben. 428, 429.

‡ 7 Bom. A. C. J. 64; 7 Ben. 563.

a third person, or by claiming title in himself; and in either case the lessor or his transferee does some act showing his intention to determine the lease:

(n) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.

Illustrations to Clause (f).

A lessee accepts from his lessor a new lease of the property leased, to take effect during the continuance of the existing lease. This is an implied surrender of the former lease, and such lease determines thereupon.

112. A forfeiture under section 111, clause (g), is waived by acceptance of rent which has become due since the forfeiture, or by distress for such rent, or by any other act on the part of the lessor showing an intention to treat the lease as subsisting:

Provided that the lessor is aware that the forfeiture has been incurred:

Provided also that, where rent is accepted after the institution of a suit to eject the lessee on the ground of forfeiture, such acceptance is not a waiver.

113. A notice given under section 111, clause (d), is waived, with the express or implied consent of the person to whom it is given, by any act on the part of the person giving it, showing an intention to treat the lease as subsisting.

Illustrations.

(a.) A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires. B tenders, and A accepts, rent which has become due in respect of the property since the expiration of the notice. The notice is waived.

(b.) A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires and B remains in possession. A gives to B as lessee a second notice to quit. The first notice is waived.

114. Where a lease of immoveable property has determined by forfeiture for non-payment of rent, and the lessor sues to eject the lessee, if, at the hearing of the suit, the lessee pays or tenders to the lessor the rent in arrear, together with interest thereon and his full costs

187.* No right as executor or legatee can be established in any Court of Justice unless a Court of competent jurisdiction[†] "in British India"[‡] shall have granted probate of the will under which the right is claimed, or shall have granted letters of administration "with the will, or with a copy of an authenticated copy of the will, annexed."[§]

188. Probate of a will, when granted, establishes the will from the death of the testator, and renders valid all intermediate acts of the executor as such.

189. Letters of administration cannot be granted to any person who is a minor or is of unsound mind, nor to a married woman without the previous consent of her husband.

190.¶ No right to any part of the property of a person who has died intestate can be established in any Court of Justice unless letters of administration have first been granted by a Court of competent jurisdiction.

191. Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death.

192. Letters of administration do not render valid any intermediate acts of the administrator tending to the diminution or damage of the intestate's estate.

* This section applies to the wills of Hindus, &c., in the Lower Provinces of Bengal and in the towns of Madras and Bombay.—See the Hindu Wills Act (XXI. of 1870).

† So far as regards the Administrator-General, the High Court at the Presidency-town is a Court of competent jurisdiction within the meaning of ss. 187 and 190, wheresoever within the Presidency the property to be comprised in the probate or letters of administration may be situate.—See Act II. of 1874, s. 14. For prohibition of charges for commission by executors or administrators other than the Administrator General, see *ib.*, s. 56.

‡ In s. 187, the words first and next quoted have been substituted for the words "within the province" and "under the 180th section," respectively, by the Repealing and Amending Act (VIII of 1903), s. 2.

§ S. 190 does not apply to any part of the property of a Native Christian.—See Act VII. of 1901.

any of such leases ** together with, or subject to, those of the local law (if any) for the time being in force.

Such notification shall not take effect until the expiry of six months from the date of its publication.

CHAPTER VI.

OF EXCHANGES.

118. When two persons mutually transfer the ownership of one thing for the ownership of another; neither thing or both things being money only, the transaction is called an "exchange."

A transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale.

119. In the absence of a contract to the contrary, the party Right of party deprived of deprived of the thing or part thereof he thing received in exchange. has received in exchange, by reason of any defect in the title of the other party, is entitled, at his option, to compensation, or to the return of the thing transferred by him.

120. Save as otherwise provided in this chapter, each party Rights and liabilities of has the rights, and is subject to the liabilities, of a seller as to that which he gives, and has the rights, and is subject to the liabilities of a buyer as to that which he takes.

Exchange of money.

121. On an exchange of money, each party thereby warrants the genuineness of the money given by him.

CHAPTER VII.

OF GIFTS.

122. "Gift" is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person

* The words in the first paragraph of s. 117 have been inserted by Act VI. of 1904, s. 6.

198. When there is no executor, and no residuary legatee or Grant of administration where no executor nor residuary legatee, nor representative of such legatee. representative of a residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate,* or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the will, and letters of administration may be granted to him or them accordingly.

199. Letters of administration with the will annexed shall not be granted to any legatee other than an universal or a residuary legatee until a citation before grant of administration to legatee other than universal or residuary. citation has been issued and published in the manner hereinafter mentioned calling on the next-of-kin to accept or refuse letters of administration.

200. When the deceased has died intestate, those who are Order in which connections entitled to administer. connected with him either by marriage or by consanguinity are entitled to obtain letters of administration of his estate and effects in the order, and according to the rules, hereinafter stated.

201. If the deceased has left a widow, administration shall be granted to the widow unless the Court Administration to widow unless Court see cause to exclude her. shall see cause to exclude her, either on the ground of some personal disqualification, or because she has no interest in the estate of the deceased.

Illustrations.

(a) The widow is a lunatic, or has committed adultery, or has been barred by her marriage-settlement of all interest in her husband's estate, there is cause for excluding her from the administration

(b) The widow has married again since the decease of her husband, this is not good cause for her exclusion.

202 If the Judge think proper, he may associate any person Association with widow or persons with the widow in the administration. administration who would be entitled solely to the administration if there were no widow.

203. If there be no widow, or if the Court see cause to exclude the widow, it shall commit the Administration where no widow, or widow excluded administration to the person or persons

*. See s. 6, Act XXI. of 1870.

(ii) A effects a policy on his own life with an Insurance Company, and assigns it to a Bank for securing the payment of an existing or future debt. If A dies, the Bank is entitled to receive the amount of the policy, and to sue on it without the concurrence of A's executor, subject to the proviso in sub-section (1) of section 130, and to the provisions of section 132.

131. Every notice of transfer of an actionable claim shall be
 Notice to be in writing, in writing, signed by the transferor or
 signed. his agent duly authorized in this behalf,
 or, in case the transferor refuses to sign, by the transferee or his
 agent, and shall state the name and address of the transferee.

132. The transferee of an actionable claim shall take it
 Liability of transferee of subject to all the liabilities and equities
 actionable claim. to which the transferor was subject in
 respect thereof at the date of the transfer.

Illustrations

(i) A transfers to C a debt due to him by B, A being then indebted to B. C sues B for the debt due by B to A. In such suit B is entitled to set off the debt due by A to him, although C was unaware of it at the date of such transfer.

(ii) A executed a bond in favour of B under circumstances entitling the former to have it delivered up and cancelled. B assigns the bond to C for value and without notice of such circumstances. C cannot enforce the bond against A.

133. Where the transferor of a debt warrants the solvency of
 Warranty of solvency of the debtor, the warranty, in the absence
 debtor. of a contract to the contrary applies only
 to his solvency at the time of the transfer, and is limited where the
 transfer is made for consideration, to the amount or value of such
 consideration.

134. Where a debt is transferred for the purpose of securing
 Mortgaged debt. an existing or future debt, the debt so
 transferred, if received by the transferor,
 or recovered by the transferee, is applicable, first, in payment of the
 costs of such recovery; secondly, in or towards satisfaction of the
 amount for the time being secured by the transfer; and the residue,
 if any, belongs to the transferor or other person entitled to receive
 the same.

135. Every assignee, by endorsement or other writing, of a
 Assignment of rights under policy of marine insurance, or of a policy
 marine or fire policy of in- of insurance against fire, in whom the
 insurance. property in the subject insured shall be

209. When the will has been lost or destroyed, and no copy of its contents has been made, nor the draft preserved, lost or destroyed will. Probate may be granted of its contents if they can be established by evidence.

210. When the will is in the possession of a person residing out of the province in which application for probate is made, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for the interests of the estate that probate should be granted without waiting for the arrival of the original, probate may be granted of the copy so transmitted, limited until the will or an authenticated copy of it be produced.

211. Where no will of the deceased is forthcoming, but there is reason to believe that there is a will produced. Administration until the will or an authenticated copy of it be produced. in existence, letters of administration may be granted, limited until the will or an authenticated copy of it be produced.

(b)—Grants for the Use and Benefit of others having Right.

212. When any executor is absent from the province in which application is made, and there is no executor within the province willing to act, letters of administration with the will annexed may be granted to the attorney* of the absent executor, for the use and benefit of his principal limited until he shall obtain probate or letters of administration granted to himself.

213. When any person to whom, if present, letters of administration, with the will annexed, might be granted, is absent from the province, letters of administration, with the will annexed, may be granted to his attorney,* limited as above mentioned.

214. When a person entitled to administration in case of intestacy is absent from the province, and no person equally entitled is willing to act, letters of administration may be granted to the attorney of the absent person, limited as before mentioned.

* The attorney must be within the jurisdiction of the Court—4 B. L. R., Ap, 49.

THE SCHEDULE—(continued).

(b.) ACTS OF THE GOVERNOR-GENERAL IN COUNCIL.

Number and year.	Subject.	Extent of repeal.
IX of 1842 ...	Lease and Release	The whole.
XXXI. of 1854 ...	Modes of conveying land.	Section 17.
XI. of 1855 ...	Mesne-profits and Improvements.	Section 1; in the Title, the words, "to mesne-profits, and;" and in the Preamble, "to limit the liability for mesne-profits, and"
XXVII. of 1866 ...	Indian Trustees Act.	Section 31.
IV of 1872 ...	Punjab Laws Act.	So far as it relates to Bengal Regulations I. of 1798 and XVII. of 1806.
XX. of 1875 ...	Central Provinces Laws Act	So far as it relates to Bengal Regulations I of 1798 and XVII. of 1806.
XVIII. of 1876 ...	Oudh Laws Act.	So far as it relates to Bengal Regulation XVII. of 1806.
I. of 1877 ...	Specific Relief Act.	In sections 35 and 36, the words "in writing"

(c.) REGULATIONS.

Number and year.	Subject.	Extent of repeal.
Bengal Regulation I. of 1798.	Conditional Sales.	The whole Regulation.
Bengal Regulation XVII. of 1806.	Redemption ...	The whole Regulation.
Bombay Regulation V. of 1827.	Acknowledgment of Debts: Interest: Mortgagees in Possession.	Section 15.

220. If an executor appointed generally give an authority to Administration, with will annexed, limited to particular purpose. an attorney to prove a will on his behalf, and the authority is limited to a particular purpose, the letters of administration, with the will annexed, shall be limited accordingly.

221. Where a person dies, leaving property of which he was the sole or surviving trustee, or in which property in which person he had no beneficial interest on his own has beneficial interest account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to the person beneficially interested in the property, or to some other person on his behalf.

222. When it is necessary that the representative of a person deceased be made a party to a pending Administration limited to suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other cause or suit which may be commenced in the same or in any other Court between the parties, or any other parties, touching the matters at issue in the said cause or suit, and until a final decree shall be made therein, and carried into complete execution.

223. If, at the expiration of twelve months from the date of any probate or letters of administration, the executor or administrator to whom purpose of becoming party to suit to be brought against the same has been granted is absent from administrator. the province within which the Court that has granted the probate or letters of administration is situate, it shall be lawful for such Court to grant, to any person whom it may think fit, letters of administration, limited to the purpose of becoming and being made a party to a suit to be brought against the executor or administrator, and carrying the decree which may be made there in into effect.

224. In any case in which it may appear necessary for preserving the property of a deceased person Administration limited to collection and preservation of deceased's property. the Court within whose district any of the property is situate, may grant, to any person whom such Court may think fit, letters of administration limited to the collection and preservation of the property of the

tative may* be appointed for the purpose of administering such part of the estate.

230. In granting letters of administration of an estate {not

Rules as to grants of ef- fully administered, the Court shall be
fects unadministered guided by the same rules as apply to
original grants, and shall grant letters of administration to those
persons only to whom original grants might have been made.†

231. When a limited grant has expired by effluxion of time,

Administration when li- or the happening of the event or con-
mited grant expired, and tingency on which it was limited, and
still some part of estate un- there is still some part of the deceased's
administered estate unadministered, letters of admi-
nistration shall be granted to those persons to whom original grants
might have been made.‡

(g.)—Alteration in Grants.§

232. Errors in names and descriptions, or in setting forth the

What errors may be rec- time and place of the deceased's death,
tified by Court. or the purpose in a limited grant, may
be rectified by the Court, and the grant of probate or letters of ad-
ministration may be altered and amended accordingly.

233. If, after the grant of letters of administration with the

Procedure where codicil will annexed, a codicil be discovered,
discovered after grant of it may be added to the grant on due
administration with will an- proof and identification, and the grant
nexed. altered and amended accordingly.

(h.)—Revocation of Grants.||

Revocation or annulment
for just cause.

234. The grant of probate or letters
of administration may be revoked or an-
nulled for just cause.

"Just cause."

Explanation.—Just cause is—

1st, that the proceedings to obtain the grant were defective in
substance ;

* 12 B. L. R. 428.

† 12 B. L. R. 428, *see* Hindu Wills Act (XXI. of 1870), s. 6.

‡ *See* Hindu Wills Act (XXI. of 1870), s. 6.

§ *See* Hindu Wills Act (XXI. of 1870), s. 6

|| Compare the Probate and Administration Act (V. of 1881), Ch. IV.

THE INDIAN TREASURE-TROVE ACT, 1878

(Act VI. of 1878).*

RECEIVED THE G.-G.'s ASSENT ON THE 13TH FEBRUARY 1878.

An Act to amend the Law relating to Treasure-trove.

WHEREAS it is expedient to amend the law relating to treasure-trove ; It is hereby enacted as follows :—

Preliminary.

Short title; 1. This Act may be called "The Indian Treasure-trove Act, 1878;"

Extent; It extends to the whole of British
 India:

Commencement. And it shall come into force at once.

2. [*Repeal of enactments.*] Repealed by the Repealing and Amending Act (XII. of 1891).

* For the Statement of Objects and Reasons, see *Gazette of India*, 1877, Pt V, p. 1463; for Discussions in Council, see *ibid*, Supplement, pp. 1288 and 1326, *ibid*, 1878, pp. 207 and 287.

Act VI. of 1878 has been declared in force in—
Angul and the Khondmals, by the Angul District Regulation (I. of
1894), s. 3,

the Santhal Parganas by the Santhal Parganas Settlement Regulation (III. of 1872), s. 3, as amended by the Santhal Parganas Laws Regulation (III. of 1886), s. 3;

Upper Burma generally (except the Shan States), by the Upper Burma Laws Act (XX. of 1836), s. 6.

It has also been declared, by notification under s. 3 (a) of the Scheduled Districts Act (XIV of 1874), to be in force in the following portions of the de-regulationized Scheduled Districts of the Churia Nagpur Division, namely :—

the Districts of Hazaribagh, Lohardaga, and Manbhum and Pargana Dhalbhum, and the Kolman in the District of Singhbhum (see *Gazette of India*, 1881, Pt I, p. 504). The District of Lohardaga included at this time the present District of Palamau, which was separated in 1894.

5-10-1909—2,000.

Act VI, 1878.—1

235A.* The High Court may, from time to time, appoint such Judicial officers within any district as it thinks fit to act for the District Judge as Delegates to grant probate and letters of administration in non-contentious cases within such local limits as it may from time to time prescribe :

Provided that, in the case of High Courts not established by Royal Charter, such appointment be made with the previous sanction of the Local Government.

Persons so appointed shall be called "District Delegates."

236. The District Judge shall have the like powers and authority in relation to the granting of probate and letters of administration, and all matters connected therewith, as are by law vested in him in relation to any civil suit or proceeding depending in his Court.

237. The District Judge may order any person to produce and bring into Court any paper or writing, being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person ;

and, if it be not shown that any such paper or writing is in the possession or under the control of such person, but there is reason to believe that he has the knowledge of any such paper or writing, the Court may direct such person to attend for the purpose of being examined respecting the same ;

and such person shall be bound to answer such questions as may be put to him by the Court, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like punishment under the Indian Penal Code† in case of default in not attending, or in not answering such questions, or not bringing in such paper or writing, as he would have been subject to in case he had been a party to a suit, and had made such default ;

and the costs of the proceeding shall be in the discretion of the Judge.

* S. 235A has been inserted by Act VI. of 1881, s. 2.

† Act XLV. of 1860.

a certain place (*mentioning it*), and requiring all persons claiming the treasure or any part thereof to appear, personally or by agent, before the Collector on a day and at a place therein mentioned, such day not being earlier than four months or later than six months after the date of the publication of such notification :

(b) When the place in which the treasure appears to the Collector to have been found was, at the date of the finding, in the possession of some person other than the finder, the Collector shall also serve on such person a special notice in writing to the same effect.

6. Any person having any right to such treasure or any part thereof as owner of the place in which it was found or otherwise, and not appearing as required by the notification issued under section 5, shall forfeit such right.

7. On the day notified under section 5, the Collector shall cause the treasure to be produced before him, and shall enquire as to, and determine,—

(a) the person by whom, the place in which, and the circumstances under which, such treasure was found; and,

(b) as far as is possible, the person by whom, and the circumstances under which, such treasure was hidden.

8. If, upon an enquiry made under section 7, the Collector sees reason to believe that the treasure was hidden, within one hundred years before the date of the finding, by a person appearing as required by the said notification, and claiming such treasure, or by some other person under whom such person claims, the Collector shall make an order adjourning the hearing of the case for such period as he deems sufficient to allow of a suit being instituted in the Civil Court by the claimant to establish his right.

When treasure may be declared ownerless.

9. If, upon such enquiry, the Collector sees no reason to believe that the treasure was so hidden, or

if, where a period is fixed under section 8, no suit is instituted as aforesaid within such period to the knowledge of the Collector, or

241A.* Probate and letters of administration may, upon ap-

Probate and letters of ad- plication for that purpose to any Dis-
 ministration may be grant- trict Delegate, be granted by him in
 ed by Delegate. any case in which there is no conten-
 tion if it appears by petition (verified as hereinafter mentioned)
 that the testator or intestate, as the case may be, at the time of his
 death, resided within the jurisdiction of such Delegate.

242. Probate or letters of administration shall have effect

Conclusiveness of pro- over all the property and estate, move-
 bate or letters of adminis- able or immoveable, of the deceased,
 tration. throughout the province in which the
 same is "or are"† granted,

and shall be conclusive as to the representative title against all
 debtors of the deceased, and all persons holding property which
 belongs to him, and shall afford full indemnity to all debtors pay-
 ing their debts and all persons delivering up such property to the
 person to whom such probate or letters of administration shall have
 been granted.

‡ Provided that probates and letters of administration granted

Effect of unlimited pro- by a High Court § after the first day of
 bates, &c, granted by April 1875 shall, unless otherwise
 High Court. directed by the grant, have like effect
 throughout the whole of British India.

"Provided that probates and letters of administration grant-
 ed—

(a) by a High Court, or

(b) by a District Judge, where the deceased at the time of
 his death had his fixed place of abode situate within
 the jurisdiction of such Judge, and such Judge certi-
 fies that the value of the property and estate affected
 beyond the limits of the Province does not exceed
 ten thousand rupees,

shall, unless otherwise directed by the grant, have like effect
 throughout the whole of British India." ¶

* S 241A has been inserted by Act VI. of 1881, s. 3.

† The words quoted have been inserted by Act XII of 1891, s. 2 (2)
 and Sch

‡ This proviso has been added by Act XIII. of 1875, s. 2.

§ For definition of "High Court," see Act II of 1877

¶ The proviso last quoted has been added by Act VIII. of 1903, s. 2

(a) allot to either party the whole or more than his share of such treasure, on such party paying to the Collector for the other party such sum of money as the Collector may fix as the equivalent of the share of such other party, or of the excess so allotted, as the case may be; or

(b) sell such treasure or any portion thereof by public auction, and divide the sale-proceeds between the parties according to the rule hereinbefore prescribed :

Provided also that, when the Collector has, by his declaration under section 9, rejected any claim made under this Act by any person other than the said finder or person claiming as owner of the place in which the treasure was found, such division shall not be made until after the expiration of two months without an appeal having been presented under section 9 by the person whose claim has been so rejected, or, when an appeal has been so presented, after such appeal has been dismissed.

When the Collector has made a division under this section, he and shares to be delivered shall deliver to the parties the portions of such treasure, or the money in lieu thereof, to which they are respectively entitled under such division.

13. When a declaration has been made as aforesaid in respect of any treasure, and two or more persons have appeared as aforesaid, and each of them claimed as owner of the place where such treasure was found, or the right of any person who has so appeared and claimed is disputed by the finder of such treasure, the Collector shall retain such treasure, and shall make an order staying his proceedings with a view to the matter being enquired into and determined by a Civil Court.

14. Any person who has so appeared and claimed may, within one month from the date of such order, institute a suit in the Civil Court to obtain a decree declaring his right: and in every such suit the finder of the treasure and all persons disputing such claim before the Collector shall be made defendants.

15. If any such suit is instituted, and the plaintiff's claim is finally established therein, the Collector and division thereupon. shall, subject to the provisions of section 12, divide the treasure between him and the finder.

within the district at the time of his death, unless by a proceeding to revoke the grant if obtained by a fraud upon the Court.

244. Application for probate shall be made by a petition distinctly written in English or in the language in ordinary use in proceedings before the Court in which the application is made, with the will annexed, and stating—

the time of the testator's death,

that the writing annexed is his last will and testament,

that it was duly executed,

*[the amount of assets which are likely to come to the petitioner's hands, and

that the petitioner is the executor named in the will,]

and in addition to these particulars, when the application is to the District Judge, the petitioner shall further state that the deceased, at the time of his death, had his fixed place of abode, or had some property, moveable or immoveable, situate within the jurisdiction of the Judge;

*[and, when the application is to a District Delegate, the petition shall further state that the deceased, at the time of his death, resided within the jurisdiction of such Delegate.]

† Where the application is to the District Judge, and any portion of the assets likely to come to the petitioner's hands is situate in another Province, the petition shall further state the amount of such assets in each Province and the District Judges within whose jurisdiction such assets are situate.

245. In cases wherein the will is written in any language other than English, or than that in ordinary use in proceedings before the Court, there shall be a translation thereof annexed to the petition by a translator of the Court if the language be one for which a translator is appointed; or, if the will be in any other language, then by any person competent to translate the same, in which case such translation shall be verified by that person in the following manner :—

* As amended by Act VI of 1880, s. 3.

† This paragraph has been added by Act VI. of 1881, s. 4.

† In s. 244, this paragraph has been added by Act VIII. of 1903, s. 2.

ACT XXVII. OF 1866

(The Indian Trustee Act, 1866).*

RECEIVED THE G-G.'S ASSENT ON THE 24TH OCTOBER 1866.

An Act to consolidate and amend the Law relating to the Conveyance and Transfer of Property in British India vested in Mortgagees and Trustees in cases to which English Law is applicable.

WHEREAS it is expedient to consolidate and amend the laws relating to the conveyance and transfer of moveable and immoveable property in British India vested in mortgagees and trustees in cases to which English law is applicable; It is hereby enacted as follows:—

1. [*Repeal of Act*] *Repealed by the Repealing Act (XIV. of 1870).*

2 In this Act, unless there be something repugnant in the subject or context,—

“immoveable property” shall extend to and include mesuages, tenements, and hereditaments, corporeal and incorporeal, of every tenure or description, whatever may be the estate or interest therein;

“stock” shall mean any fund, annuity, or security transferable in books kept by any company or society established or to be established,

* The Statement of Objects and Reasons for the Bill which was passed into law as Act XXVII. of 1866 is not published For Discussions on the Bill, see *Gazette of India*, 1866, Supplement, pp. 416, 417, 494, and 531

This Act (XXVII of 1866) has been declared, by notification under s. 3 (a) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts: The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singhbhum —See *Gazette of India*, 1881, Pt. I, p. 504

This Act is mainly founded on “the Trustee Act, 1853” (Stat. 13 & 14 Vict, c 60), and “the Trustee Act, 1852” (Stat. 15 & 16 Vict, c 55).

or, where any such application has been made, the Court to which it was made, the person or persons by whom it was made, and the proceedings (if any) had thereon.

(2) The Court to which any such application is made under the proviso to section 242 may, if it thinks fit, reject the same.

247. The petition for probate or letters of administration shall, in all cases, be subscribed by the petitioner and his pleader (if any), and shall be verified by the petitioner in the following manner, or to the like effect :—

"I (A. B.), the petitioner in the above petition, declare that what is stated therein is true to the best of my information and belief."

248. Where the application is for probate, the petition shall also be verified by at least one of the witnesses to the will (when procurable) in the manner or to the effect following :—

"I (C. D.), one of the witnesses to the last will and testament of the testator mentioned in the above petition, declare that I was present, and saw the said testator affix his signature (or mark) thereto (as the case may be) (or that the said testator acknowledged the writing annexed to the above petition to be his last will and testament in my presence)."

249. If any petition or declaration which is hereby required to be verified shall contain any averment which the person making the verification knows or believes to be false, such person shall be subject to punishment according to the provisions of the law* for the time being in force for the punishment of giving or fabricating false evidence.

250. In all cases it shall be lawful for the District Judge "or District Delegate,"† if he shall examine petitioner in person, think proper,—

to examine the petitioner in person upon oath or solemn affirmation, and also

to require further evidence of the due execution of the will, or the right of the petitioner to the letters of administration, as the case may be, and require further evidence,

* See the Indian Penal Code (Act XLV. of 1860), Ch. XI.

† The words quoted have been inserted by Act VI. of 1881, s. 9.

of the Punjab "*and the Chief Court of Lower Burma,*"* or such one or more Judges of the said Courts respectively as shall be appointed by the Chief Justice or the senior Judge,† as the case may be, to entertain applications, and make orders, under this Act;

"trust" shall not mean the duties incident to an estate conveyed by way of mortgage; but, with this exception, the words "trust" and "trustee" shall extend to and include implied and constructive trusts, and shall extend to and include cases where the trustee has some beneficial estate or interest in the subject of the trust, and shall extend to and include the duties incident to the office of executor or administrator of a deceased person;

"lunatic" shall mean any person who shall have been found by due course of law to be of unsound mind and incapable of managing his affairs;

"person of unsound mind" shall mean any person not a minor, who, not having been found to be a lunatic, shall be incapable, from infirmity of mind, to manage his own affairs;

In the case of a will made or an intestacy occurring before the first day of January 1866,‡ "heir" shall mean the person claiming an interest in the immoveable property of a deceased person under the laws concerning descent applicable to such property; and "devisee" shall, in addition to its ordinary signification, mean the heir of a devisee and the devisee of an heir, and generally any person claiming an interest in the immoveable property of a deceased person, not as heir of such deceased person, but by a title dependent solely upon the operation of the laws concerning devise and descent:

In the case of a will made or an intestacy occurring on or after the first day of January 1866,‡ "heir" shall mean any person claiming an interest in the immoveable property of a deceased person under the rules for the distribution of an intestate's estate;

* The Italics have been inserted by Act VI of 1900, s. 47 and Sch. I.

† As to the Punjab, see "the Punjab Courts Act" (XVIII of 1884), s. 5.

‡ The day on which "the Indian Succession Act" (X. of 1865) came into force.

253. No proceeding shall be taken on a petition for probate

After entry of caveat, no proceeding taken on petition until after notice to caveator. or letters of administration after a caveat against the grant thereof has been entered with the Judge "or officer"* to whom the application has been made, "until notice has been given of its entry with some other Delegate"† after such notice to the person by whom the same has been entered, as the Court shall think reasonable.

253A.† A District Delegate shall not grant probate or letters

District Delegate when not to grant probate or administration of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

Explanation.—By "contention" is understood the appearance of any one in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf, to oppose the proceeding.

253B.† In every case in which there is no contention, but it

Power to transmit statement to District Judge in doubtful cases where no contention. appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

253C.† In every case in which there is contention, or the

Procedure where there is contention, or District Delegate thinks probate or letters of administration should be refused in his Court. District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any documents that may have been filed therewith, shall be returned to the person by whom the application was made in order

* In s. 253, the words quoted in both places have been inserted by Act VI. of 1881, s. 6.

† Ss. 253A, 253B, and 253C have been inserted by Act VI. of 1881, s. 7.

effect as if the trustee or mortgagee had been sane, and had duly executed a deed so releasing or disposing of the contingent right.

6. When any lunatic or person of unsound mind shall be solely entitled to any stock or Government securities, or to anything in action, upon any trust, or by way of mortgage, it shall be lawful for the High Court to make an order vesting in any person or persons the right to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, or to sue for and recover such thing in action, or any interest in respect thereof ;

and when any person or persons shall be entitled jointly with any lunatic or person of unsound mind to any stock or Government securities, or thing in action, upon any trust or by way of mortgage, it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, or to sue for and recover such thing in action, or any interest in respect thereof, either in such person or persons so jointly entitled as aforesaid, or in such last-mentioned person or persons together with any other person or persons the said High Court may appoint.

7. When any stock or Government securities shall be standing in the name of any deceased person whose executor or administrator is a lunatic or person of unsound mind, or when anything in action shall be vested in any lunatic or person of unsound mind as the executor or administrator of a deceased person, it shall be lawful for the High Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, or to sue for and recover such thing in action, or any interest in respect thereof, in any person or persons the said Court may appoint.

8. Whenever any minor* shall hold any immoveable property upon any trust or by way of mortgage, it shall be lawful for the High Court to make an order vesting such property in such person or persons in such manner, and for such estate, as the said Court shall direct ; and the order shall have the same

* For definition of minor, see "the Indian Majority Act" (IX. of 1875).

18. A certificate granted under this Act may be revoked for any of the following causes, namely—

- Revocation of certificate.
- (a) that the proceedings to obtain the certificate were defective in substance;
- D (b) that the certificate was obtained fraudulently by the
un making of a false suggestion, or by the concealment
ble from the Court of something material to the case;
- 26 (c) that the certificate was obtained by means of an untrue
Concurr allegation of a fact essential in point of law to
High Court justify the grant thereof, though such allegation was
made in ignorance or inadvertently;
- that the certificate has become useless and inoperative through circumstances;

decree or order made by a competent Court in suit or other proceeding with respect to effects
Of comprising debts or securities specified in the certificate renders it proper that the certificate should be
265. A certificate revoked.

Executor of his will. Subject to the other provisions of this Act, an appeal shall lie to the High Court from an order of a District Court granting, or revoking a certificate under this Act, and the High Court may, if it thinks fit, by its order on the appeal, declare the person to whom the certificate should be granted, and direct the District Court, on application being made therefor, to grant it accordingly in supersession of the certificate, if any, already granted.

(2) An appeal under sub-section (1) must be preferred within the time allowed for an appeal under the Code of Civil Procedure.*

(3) Subject to the provisions of sub-section (1) and of Chapters XLVI. and XLVII. of the Code of Civil Procedure* as applied by section 647 of that Code, an order of a District Court under this Act shall be final.

20. Save as provided by this Act, a certificate granted thereunder in respect of any of the effects of a deceased person shall be invalid if there has been a previous grant of such certificate, probate, or letters of administration.

* Act XIV. of 1882 (see now, Act V. of 1908 and the portion thereof corresponding to s. 647 of Act XIV. of 1882).

as if the trustee had duly executed a conveyance so releasing or disposing of the contingent right.

13. When any person jointly entitled with any other person or persons to a contingent right in any im-

High Court may make order where persons jointly entitled with others out of jurisdiction to contingent right in immoveable property.

moveable property upon any trust shall be out of the jurisdiction of the High Court, or cannot be found, it shall be lawful for the said Court to make an order disposing of the contingent right of the person out of the jurisdiction, or who cannot be found, to the person or persons so jointly entitled as aforesaid, or to such last-mentioned person or persons together with any other person or persons; and the order shall have the same effect as if the trustee out of the jurisdiction, or who cannot be found, had duly executed a conveyance so releasing or disposing of the contingent right.

14. Where there shall have been two or more persons jointly

holding any immoveable property upon any trust, and it shall be uncertain which of such trustees was the survivor, it shall be lawful for the High Court to make an order vesting such property in such person or persons, in such manner, and for such estate, as the said Court shall direct; and the order shall have the same effect as if the survivor of such trustees had duly executed a conveyance of the property in the same manner for the same estate.

15. Where any one or more person or persons shall have

held any immoveable property upon any trust, and it shall not be known, as to the trustee last known to have held such property, whether he be living or dead, it shall be lawful for the High Court to make an order vesting such property in such person or persons in such manner, and for such estate, as the said Court shall direct; and the order shall have the same effect as if the last trustee had duly executed a conveyance of the property in the same manner for the same estate.

16. When any person holding any immoveable property

upon any trust shall have died intestate as to such property without an heir, or shall have died, and it shall not be known who is his heir or devisee, it shall be lawful for the High Court to make an order vesting such property in such person or persons, in such manner, and for such estate, as the said Court shall direct; and the order shall

28. Notwithstanding anything in the Regulation of the Bombay Code No. VIII. of 1827, the provisions of section 3, section 6, subsection (1), clause (f), and sections 8, 9, 10, 11, 12, 14, 16, 18, 19, 25, 26, and 27 of this Act, with respect to certificates under this Act and applications therefor, and of section 98 of the Probate and Administration Act, 1881,* with respect to the exhibition of inventories and accounts by executors and administrators, shall, so far as they can be made applicable, apply, respectively, to certificates granted under that Regulation, and applications made for certificates thereunder, after the commencement of this Act, and to the exhibition of inventories and accounts by the holders of such certificates so granted.

* Act V. of 1881.

such property in such person or persons, in such manner, and for such estate, as the said Court shall direct, that is to say,—

when an heir or devisee of such mortgagee shall be out of the jurisdiction of the High Court, or cannot be found ;

when an heir or devisee of such mortgagee shall, upon a demand by a person entitled to require a conveyance of such property, or a duly-authorized agent of such last mentioned person, have stated in writing that he will not convey the same, or shall not convey the same for the space of twenty-eight days next after a proper deed for conveying such property shall have been tendered to him by a person entitled as aforesaid or a duly-authorized agent of such last-mentioned person ;

when it shall be uncertain which of several devisees of such mortgagee was the survivor ;

when it shall be uncertain as to the survivor of several devisees of such mortgagee, or as to the heir of such mortgagee, whether he be living or dead ,

when such mortgagee shall have died intestate as to such property, and without an heir, or shall have died, and it shall not be known who is his heir or devisee ;

and the order of the said High Court made in any one of the foregoing cases shall have the same effect as if the heir or devisee, or surviving devisee, as the case may be, had duly executed a conveyance of the property in the same manner and for the same estate.

20. In every case where the High Court shall, under the

Power to appoint person provisions of this Act, be enabled to to convey in certain cases. make an order having the effect of a conveyance of any immoveable property, or having the effect of a release or disposition of the contingent right of any person or persons, born or unborn, it shall also be lawful for the High Court, should it be deemed more convenient, to make an order appointing a person to convey such property, or release or dispose of such contingent right ;

and the conveyance, or release or disposition, of the person so appointed, shall, when in conformity with the terms of the order by which he is appointed, have the same effect in conveying the property, or releasing or disposing of the contingent right, as an order of the High Court would, in the particular case, have had under the provisions of this Act.

THE SECOND SCHEDULE.

FORMS OF CERTIFICATE AND EXTENDED CERTIFICATE.

(See Section 11.)

In the Court of

To A. B.

Whereas you applied on the day of for a certificate under the Succession Certificate Act, 1889, in respect of the following debts and securities, namely:—

Debts.

Serial number.	Name of debtor.	Amount of debt, including interest on date of application for certificate.	Description and date of instrument, if any, by which the debt is secured.

Securities.

Serial number.	DESCRIPTION.			Market-value of security on date of application for certificate.
	Distinguishing number or letter of security.	Name, title, or class of security.	Amount or par value of security.	

This certificate is accordingly granted to you, and empowers you to collect those debts [and] [to receive] [interest] [dividends] [on] [to negotiate] [to transfer] [those securities],

Dated this day of

District Judge.

for the High Court to make an order vesting the sole right to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, or to sue for and recover such thing in action, or any interest in respect thereof, in such person or persons as the said Court may appoint.

23. Where any one of the trustees of any stock, Government securities, or thing in action, shall neglect or refuse to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, or to sue for or recover such thing in action according to the direction of the person absolutely entitled thereto, for the space of twenty-eight days next after a request in writing for that purpose shall have been made to him by such person, it shall be lawful for the High Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, or to sue for and recover such thing in action, in the other trustee or trustees of the said stock, Government securities, or thing in action, or in any person or persons whom the said Court may appoint jointly with such other trustee or trustees.

24. When any stock or Government securities shall be standing in the sole name of a deceased person, and his executor or administrator shall be out of the jurisdiction of the High Court, or cannot be found, or it shall be uncertain whether such executor or administrator be living or dead, or such executor or administrator shall neglect or refuse to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, according to the direction of the person absolutely entitled thereto, for the space of twenty-eight days next after a request in writing for that purpose shall have been made to him by the person entitled as aforesaid, it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, in any person or persons whom the said Court may appoint.

25. Where any order shall have been made under this Act vesting the right to any stock or Government securities in any person or persons appointed by the High Court, such legal right shall vest accordingly; and thereupon the person or persons so appointed are hereby authorized and empowered to execute all deeds and powers-of-attorney, and to perform all acts relating to the

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days next after an order of the High Court for that purpose shall have been served upon him, it shall be lawful for the said Court to make an order vesting all the right of such person to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, or to sue for and recover such thing in action, or any interest in respect thereof, in such person or persons as the said Court may appoint.

28. When any stock or Government securities shall be standing in the sole name of a deceased person, and his executor or administrator shall refuse or neglect to transfer such stock or Government securities, or receive the dividends, interest, or income thereof, for the space of twenty-eight days next after an order of the High Court for that purpose shall have been served upon him, it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, in any person or persons whom the said Court may appoint.

29. When any order being or purporting to be under this Act shall be made by the High Court, vesting the right to any stock or Government securities, or vesting the right to transfer any stock or Government securities, or vesting the right to call for the transfer of any stock or Government securities, in any person or persons, in every such case the legal right to transfer such stock or Government securities shall vest accordingly;

and the person or persons so appointed shall be authorized and empowered to execute all deeds and powers-of-attorney, and to perform all acts relating to the transfer of such stock or Government securities into his or their own name or names or otherwise, to the extent, and in conformity with the terms, of the order.

All companies and associations, and all persons, shall be equally bound and compellable to comply with the requisitions of such person or persons so appointed as aforesaid, to the extent, and in conformity with the terms, of such order, as such companies, associations, or persons would have been bound and compellable to comply with the requisitions of the person in whose place such appointment shall have been made.

circumstance of actual possession, when taken upon a succession, does not afford an indication of rightful title equal to that of a decision by a Judge after hearing all parties in a summary suit, though such summary suit may not be sufficient to prevent a party removed from possession thereby from instituting a regular suit: and whereas such summary suit, though it will take away many of the temptations which exist for assuming wrongful possession upon a succession, will be too tardy a remedy for obviating them all, especially as regards moveable property: and whereas it may be expedient, prior to the determination of the summary suit, to appoint a curator to take charge of property upon a succession, where there is reason to apprehend danger of misappropriation, waste, or neglect, and where such appointment will, in the opinion of the authority making the same, be beneficial under all the circumstances of the case: and whereas it will be very inconvenient to interfere with successions to estates by the appointment of curators, or by summary suits, unless satisfactory grounds for such proceedings shall appear, and unless

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- (5) The District of Lohardaga (see *Gazette of India*, 1881, Pt. I, p. 508).
 - (6) The District of Manbhum (see *Gazette of India*, 1884, Pt. I, p. 509):
 - (7) Pargana Dhalbhum in the District of Singbhum (see *Gazette of India*, 1881, Pt. I, p. 510):
 - (8) The scheduled portion of the Mirzapur District (see *Gazette of India*, 1879, Pt. I, p. 383):
 - (9) Jaunsar Bawar (see *Gazette of India*, 1879, Pt. I., p. 382).
 - (10) The Districts of Hazara, Peshawar, Kohat Bannu, Dera Ismail Khan, and Dera Ghazi Khan (see *Gazette of India*, 1886, Pt. I, p. 48):
 - (11) The District of Lahaul (see *Gazette of India*, 1886, Pt. I, p. 301):
 - (12) The Scheduled Districts of the Central Provinces (see *Gazette of India*, 1879, Pt. I., p. 771):
 - (13) Coorg (see *Gazette of India*, 1878, Pt. I., p. 747):
 - (14) The District of Sylhet (see *Gazette of India*, 1879, Pt. I, p. 631).

The Act has been extended, by notification under s. 5 of the last-mentioned Act, to the Scheduled Districts of Kumaon and Garhwal (see *Gazette of India*, 1876, Pt. I, p. 606).

In ss 2 to 19, certain formal words, which were repealed by the Repealing Act (XVI of 1874) and the Repealing Act (XII. of 1876), have been omitted.

A curator appointed under this Act is not to exercise any authority lawfully belonging to a holder of a certificate under Act XXVII. of 1860 or VII. of 1889, or to an executor or administrator—See Succession Certificate Act (VII. of 1889), s. 23 (1).

In every such case, it shall be lawful for the High Court, if the said Court shall think it expedient for the purpose of carrying such sale into effect, to make an order vesting such property or any part thereof for such estate as the Court shall think fit, either in any purchaser or in such other person as the Court shall direct.

Every such order shall have the same effect as if the person so holding or entitled had been free from all disability, and had duly executed all proper conveyances and assignments of such property for such estate.

33. Where any decree or order shall be made by the High Court for the specific performance of a contract concerning any immovable property, or for the partition or exchange of any immovable property, or generally when any decree shall be made for the conveyance of any immovable property, either in cases arising out of the doctrine of election or otherwise, it shall be lawful for the said Court to declare that any of the parties to the said suit wherein such decree is made are trustees of such property or any part thereof within the meaning of this Act, or to declare concerning the interests of unborn persons, who might claim under any party to the said suit, or under the will or voluntary settlement of any person deceased who was, during his lifetime, a party to the contract or transactions concerning which such decree is made, that such interests of unborn persons are the interests of persons who, upon coming into existence, would be trustees within the meaning of this Act.

Thereupon it shall be lawful for the High Court to make such order or orders as to the estates, rights, and interests of such persons, born or unborn, as the said Court might, under the provisions of this Act, make concerning the estates, rights, and interests of trustees, born or unborn.

34. It shall be lawful for the High Court to make declarations and give directions concerning the manner in which the right to any stock, Government securities, or thing in action vested under the provisions of this Act shall be exercised, and thereupon the person or persons in whom such right shall

than an appointment of new trustees under any power for that purpose contained in any instrument would have done.

39. An order under any of the hereinbefore-contained provisions for the appointment of a new

Who may apply.

trustee or new trustees, or concerning any immoveable property, stock, or Government securities, or thing in action subject to a trust, may be made upon the application of any person beneficially interested in such immoveable property, stock, Government securities, or thing in action, whether under disability or not, or upon the application of any person duly appointed as a trustee thereof; and an order under any of the provisions hereinbefore contained, concerning any immoveable property, stock, Government securities, or thing in action subject to a mortgage, may be made on the application of any person beneficially interested in the equity of redemption, whether under disability or not, or of any person interested in the moneys secured by such mortgage.

40. When any person shall deem himself entitled to an order

Application may be by petition. under any of the provisions hereinbefore contained, it shall be lawful for him to present a petition to the High Court for such order as he may deem himself entitled to, and he may give evidence by affidavit or otherwise in support of such petition before the said Court, and may serve such person or persons with notice of such petition as he may deem entitled to service thereof.

41. Upon the hearing of any such petition, it shall be lawful

What may be done upon petition. for the said High Court, should it be deemed necessary, to direct a reference to one of the Judges of the Court to inquire into any facts which require such an investigation, or it shall be lawful for the said Court to direct such petition to stand over, to enable the petitioner to adduce evidence or further evidence before the Court, or to enable notice or any further notice of such petition to be served upon any person or persons.

42. Upon the hearing of any such petition, it shall be lawful

Court may dismiss petition with or without costs. for the High Court to dismiss such petition with or without costs, or to make an order thereupon in conformity with the provisions of this Act.

giving up the possession of the property, file a detailed account of his administration to the satisfaction of the Judge.

12. The accounts of any such curator as is above described shall be open to the inspection of all parties interested; and it shall be competent for any such interested party to appoint a separate person to keep a duplicate account of all receipts and payments by such curator. And, if it be found that the accounts of any such curator are in arrear, or if they shall be erroneous or incomplete, or if the curator shall not produce them when ever he shall be ordered to do so by the Judge, he shall be liable to a fine not exceeding one thousand rupees for every such default.

13. After the Judge of any district shall have appointed any curator, such appointment shall preclude the Judge of any other district within the same Presidency from appointing any other curator, provided the first appointment be in respect of the whole of the property of the deceased. But, if the appointment be only in respect of a portion of the property of the deceased, this shall not preclude the appointment within the same Presidency of another curator in respect of the residue or any portion thereof, provided always that no Judge shall appoint a curator or entertain a summary suit in respect of property which is the subject of a summary suit previously instituted under this Act before another Judge; and provided, further, that, if two or more curators be appointed by different Judges for several parts of an estate, it shall be lawful for the Sadr Diwani Adalat to make such order as it shall think fit for the appointment of one curator of the whole property.

14. This Act shall not be put in force unless the aforesaid application to the Judge be made within six months of the decease of the proprietor whose property is claimed by right in succession.

15. This Act shall not be put in force to contravene any public act of settlement. Neither, in cases in which the deceased proprietor shall have given legal directions for the possession of his property after his death.

such trustee or trustees shall have been duly appointed by any power contained in any deed or instrument, or by the decree of the said Court, or by order made upon a petition to the said Court.

46. Where any minor or person of unsound mind shall be entitled to any money payable in discharge of any immovable property, stock, Government securities, or thing in action conveyed or transferred under this Act, it shall be lawful for the person by whom such money is payable to pay the same into the High Court in trust in any cause then depending concerning such money, or, if there shall be no such cause, to the credit of such minor or person of unsound mind subject to the order or disposition of the said Court;

and it shall be lawful for the said Court, upon petition in a summary way, to order any money so paid to be invested in Government securities, and to order payment or distribution thereof, or payment of the dividends or interest thereof, as to the said Court shall seem reasonable

47. Where, in any suit commenced or to be commenced in the High Court, it shall be made to appear to the Court that diligent search and enquiry have been made, after any person made a defendant, who is only a trustee, to serve him with the process of the Court, and that he cannot be found, it shall be lawful for the said Court to hear and determine such cause, and to make such absolute decree therein against every person who shall appear to it to be only a trustee, and not otherwise concerned in interest in the matter in question, in such and the same manner as if such trustee had been duly served with the process of the Court, and had appeared at the hearing of such cause:

Provided always that no such decree shall bind, affect, or in anywise prejudice, any person against whom the same shall be made, without service of process upon him as aforesaid. his heirs, executors, or administrators for or in respect of any estate, right, or interest which such person shall have at the time of making such decree for his own use or benefit, or otherwise than as a trustee as aforesaid.

order upon such petition until the right of the petitioner shall have been declared in a suit duly instituted for that purpose.

52. Every order made or purporting to be made under this Indemnity to persons obey- Act by the High Court shall be a ing orders under Act. complete indemnity to all persons whatsoever for any act done pursuant thereto; and it shall not be necessary for such persons to enquire concerning the propriety of such order, or whether the High Court has jurisdiction to make the same.

53. Any order made by the High Court under this Act shall Execution and effect of have the same effect, and be executed orders, in the same manner, as a decree.

Short title.

54. This Act may be cited as "The Indian Trustee Act, 1866."

55. [*Application of Act to Straits Settlements.*] Repealed by the Repealing Act (XVI. of 1874).

3. (1) The Local Government may, with the previous sanction of the Governor-General in Council, make rules for determining the value of land for purposes of jurisdiction in the suits mentioned in the Court Fees Act, 1870,* section 7, paragraphs v. and vi., and paragraph x., clause (d).

(2) The rules may determine the value of any class of land, or of any interest in land, in the whole or any part of a local area, and may prescribe different values for different places within the same local area.

4. Where a suit mentioned in the Court Fees Act, 1870,* section 7, paragraph iv., or Schedule II., article 17, relates to land or an interest in land of which the value has been determined by rules under the last-foregoing section, the amount at which, for purposes of jurisdiction, the relief sought in the suit is valued shall not exceed the value of the land and or interest as determined by those rules.

5. (1) The Local Government shall, before making rules under section 3, consult the High Court with respect thereto.

(2) A rule under that section shall not take effect till the expiration of one month after the rule has been published in the local official Gazette.

6. On and from the date on which rules under section 3 take effect in any part of the territories under the administration of the Governor of Fort St. George in Council to which the Madras Civil Courts Act, 1873,† extends, section 14 of that Act shall be repealed as regards that part of those territories.

PART II.

OTHER SUITS.

7. This Part extends to the whole of British India; and shall come into force on the first day of July, 1887.

Extent and commencement of Part II.

* Act VII. of 1870.

† Act III. of 1873.

ACT XXVIII. OF 1866

(The Trustees' and Mortgagees' Powers Act, 1866).*

RECEIVED THE G.-G.'S ASSENT ON THE 24TH OCTOBER 1866.

An Act to give to Trustees, Mortgagees, and others, in cases to which English Law is applicable, certain Powers now commonly inserted in Settlements, Mortgages, and Wills, and to amend the Law of Property, and relieve Trustees.

WHEREAS it is expedient that, in cases to which English law is applicable, certain powers and provisions usually inserted in settlements, mortgages, wills, and other instruments, should be made incident to the estates of the persons interested, so as to dispense with the necessity of inserting the same in every such instrument, and that in such cases trustees should be relieved; It is enacted as follows:—

* The Statement of Objects and Reasons of the Bill which was passed into law as Act XXVIII. of 1866 has not been published; for Proceedings in Council relating to the Bill, see *Gazette of India*, 1866, Supplement, pp. 416, 417, 494, and 531.

Act XXVIII of 1866 has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following scheduled districts, namely:—

West Jalpaiguri, the Western Hills of Darjiling, the Darjiling Tarai, and the Damson Sub-division of the Darjiling District.—See *Gazette of India*, 1881, Pt. I, p. 74:

The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singhbhum.—See *Gazette of India*, 1881, Pt. I, p. 504:

The scheduled portion of the Mirzapur District.—See *Gazette of India*, 1879 Pt. I., p. 383

Jaunsar Bawar.—See *Gazette of India*, 1879, Pt. I., p. 382:

The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, and Dera Ghazi Khan.—See *Gazette of India*, 1886, Pt. I., p. 48:

The District of Sylhet.—See *Gazette of India*, 1879, Pt. I, p. 631:

2,000—17-11-1909.

Act XXVIII., 1866.—1.

(a) the objection was taken in the Court of first instance at or before the hearing at which issues were first framed and recorded, or in the Lower Appellate Court in the memorandum of appeal to that Court, or

(b) the Appellate Court is satisfied, for reasons to be recorded by it in writing, that the suit or appeal was over-valued or under-valued, and that the over-valuation or under-valuation thereof has prejudicially affected the disposal of the suit or appeal on its merits.

(2) If the objection was taken in the manner mentioned in clause (a) of sub-section (1), but the Appellate Court is not satisfied as to both the matters mentioned in clause (b) of that sub-section, and has before it the materials necessary for the determination of the other grounds of appeal to itself, it shall dispose of the appeal as if there had been no defect of jurisdiction in the Court of the first instance or Lower Appellate Court.

(3) If the objection was taken in that manner, and the Appellate Court is satisfied as to both those matters, and has not those materials before it, it shall proceed to deal with the appeal under the rules applicable to the Court with respect to the hearing of appeal; but, if it remands the suit or appeal, or frames and refers issues for trial, or requires additional evidence to be taken, it shall direct its order to a Court competent to entertain the suit or appeal.

(4) The provisions of this section with respect to an Appellate Court shall, so far as they can be made applicable, apply to a Court exercising revisional jurisdiction under section 622 of the Code of Civil Procedure* or other enactment for the time being in force.

(5) This section extends to the whole of British India, and shall come into force on the first day of July, 1887.

Proceedings pending at commencement of Part I. or Part II. **12** Nothing in Part I. or Part II. shall be construed to affect the jurisdiction of any Court—

(a) with respect to any suit instituted before rules under Part I. applicable to the valuation of the suit take effect, or Part II. has come into force, as the case may be, or

(b) with respect to any appeal arising out of any such suit.

* This reference to s 622 of Act XIV. of 1882 should now be meant to apply to s. 115 of the new Code (Act V. of 1908).—See s. 158 of the latter Act.

Powers of Trustees for Sale, &c., and Trustees of Renewable Leaseholds.

2* † In all cases where, by any will, deed, or other instrument of settlement, it is expressly declared that trustees or other persons therein named or indicated shall have a power of sale, either generally or in any particular event, over any immovable property named or referred to in, or from time to time subject to the uses or trusts of, such will, deed, or other instrument, it shall be lawful for such trustees or other persons, whether such property be vested in them or not, to exercise such power of sale by selling such property, either together or in lots, and either by public auction or private contract, and either at one time or at several times.

3* ‡ It shall be lawful for the persons making any such sale to insert any such special or other conditions, and stipulations, either as to title or evidence of title, or otherwise, in any conditions of sale or contract for sale as they shall think fit; and also to buy in the property or any part thereof at any sale by auction, and to rescind or vary any contract for sale, and to resell the property which shall be so bought in, or as to which the contract shall be so rescinded, without being responsible for any loss which may be occasioned thereby;

and no purchaser under any such sale shall be bound to enquire whether the persons making the same may or may not have in contemplation any particular re-investment of the purchase money in the purchase of any other property or otherwise.

4.*§ For the purpose of completing any such sale as aforesaid, the persons empowered to sell as aforesaid shall have full power to convey or otherwise dispose of the property in question in such manner as may be necessary.

* Ss. 2 to 5 and 32 to 37 shall be repealed in the territories to which the Indian Trusts Act (II of 1882) for the time being extends or is extended—See s. 2 of that Act.

† Compare Stat. 23 & 24 Vict., c. 145, s. 1.

‡ Compare *ibid.*, s. 2.

§ Compare Stat. 23 & 24 Vict., c. 145 [which is now repealed by the Conveyancing and Law of Property Act, 1881 (Stat. 44 & 45 Vict., c. 41), and Settled Land Act, 1882 (Stat. 45 & 46 Vict., c. 38)], s. 3.

SECTIONS.

28. Ulterior transfer conditional on happening or not happening of specified event.
29. Fulfilment of condition subsequent.
30. Prior disposition not affected by invalidity of ulterior disposition.
31. Condition that transfer shall cease to have effect in case specified uncertain event happens or does not happen.
32. Such condition must not be invalid.
33. Transfer conditional on performance of act, no time being specified for performance.
34. Transfer conditional on performance of act, time being specified.

Election.

35. Election when necessary.

Apportionment.

36. Apportionment of periodical payments on determination of interest of person entitled.
37. Apportionment of benefit of obligation on severance.

(B.)—Transfer of Immoveable Property.

38. Transfer by person authorized only under certain circumstances to transfer.
39. Transfer where third person is entitled to maintenance.
40. Burden of obligation imposing restriction on use of land, or of obligation annexed to ownership, but not amounting to interest or easement.
41. Transfer by ostensible owner.

SECTIONS.

42. Transfer by person having authority to revoke former transfer.
43. Transfer by unauthorized person who subsequently acquires interest in property transferred.
44. Transfer by one co-owner.
45. Joint transfer for consideration.
46. Transfer for consideration by person having distinct interests.
47. Transfer by co-owners of share in common property.
48. Priority of rights created by transfer.
49. Transferee's right under policy.
50. Rent *bond-fide* paid to holder under defective title.
51. Improvements made by *bond-fide* holders under defective titles.
52. Transfer of property pending suit relating thereto.
53. Fraudulent transfer.

CHAPTER III.

OF SALES OF IMMOVEABLE PROPERTY.

54. "Sale" defined
Sale how made.
Contract for sale.
55. Rights and liabilities of buyer and seller.
56. Sale of one of two properties subject to a common charge.

Discharge of Incumbrances on Sale.

57. Provision by Court for incumbrances, and sale freed therefrom.

1st, a power to sell, or concur with any other person in selling, the whole or any part of the property by public auction or private contract, subject to any reasonable conditions he may think fit to make, and to rescind or vary contracts for sale, or buy in and resell the property, from time to time, in like manner ;

and, a power to appoint, or obtain the appointment of, a receiver of the rents and profits of the whole or any part of the property in manner hereinafter mentioned.

7.* Receipts for purchase-money given by the person or persons exercising the power of sale here-money sufficient discharges by conferred shall be sufficient discharges to the purchasers, who shall not be bound to see to the application of such purchase-money.

8† No such sale as last aforesaid shall be made until after Notice to be given before six months' notice in writing given to sale ; the person or one of the persons entitled to the property subject to the charge or affixed on some conspicuous part of such property ;

but, when a sale has been effected in professed exercise of the but purchaser relieved powers hereby conferred, the title of from inquiry as to circum- the purchaser shall not be liable to be stances of sale. impeached on the ground that no case had arisen to authorize the exercise of such power, or that no such notice as aforesaid had been given ; but any person damnified by any such unauthorized exercise of such power shall have his remedy in damages against the person or persons selling.

9.‡ The money arising by any sale effected as aforesaid shall Application of purchase- be applied by the person receiving the money. same as follows :—

first, in payment of all the expenses incident to the sale or incurred in any attempted sale ;

secondly, in discharge of all interest and costs then due in respect of the charge in consequence whereof the sale was made ; and,

thirdly, in discharge of all the principal moneys then due in respect of such charge ;

* Compare Stat. 23 & 24 Vict., c. 145, s. 12.

† Compare *ibid*, s. 13.

‡ Compare *ibid*, s. 14.

SECTIONS.

Anomalous Mortgages.

98. Mortgage not described in section 58, clauses (b), (c), (d), and (e).

99. [*Repealed by Act V. of 1908*]
Charges.

100. Charges.

101. Extinguishment of charges.

Notice and Tender.

102. Service or tender on or to agent.

103. Notice, &c, to or by person incompetent to contract

104. Power to make rules

CHAPTER V.

OF LEASES OF IMMOVEABLE
PROPERTY.

105. "Lease" defined.
"Lessor," "lessee," "premium,"
and "rent" defined.

106. Duration of certain leases in
absence of written contract or
local usage.

107. Leases how made.

108. Rights and liabilities of lessor
and lessee.

*A.—Rights and Liabilities of
the Lessor.**B.—Rights and Liabilities of
the Lessee.*

109. Rights of lessor's transferee.

110. Exclusion of day on which
term commences

Duration of lease for a year,
Option to determine lease.

111. Determination of lease.

112. Waiver of forfeiture.

113. Waiver of notice to quit.

SECTIONS.

114. Relief against forfeiture for
non-payment of rent.

115. Effect of surrender and forfei-
ture on under-leases.

116. Effect of holding over.

117. Exemption of leases for agri-
cultural purposes.

CHAPTER VI.

OF EXCHANGES.

118. "Exchange" defined.

119. Right of party deprived of
thing received in exchange

120. Rights and liabilities of parties.

121. Exchange of money

CHAPTER VII.

OF GIFTS.

122. "Gift" defined.

Acceptance when to be made.

123. Transfer how effected

124. Gift of existing and future
property.

125. Gift to several of whom one
does not accept.

126. When gift may be suspended or
revoked

127. Onerous gifts.

Onerous gift to disqualified
person.

128. Universal donee.

129. Saving of donations *mortis
causâ* and Muhammadan law.

CHAPTER VIII.

OF TRANSFERS OF ACTIONABLE,
CLAIMS.

130. Transfer of actionable claim.

subject to the charge, or affixed on some conspicuous part of the property, require such last-mentioned person or persons to appoint a fit and proper person as receiver, and, if no such appointment be made within ten days after such requisition, then may in writing appoint any person he may think fit.

No person shall be ineligible for the office of receiver merely because he is an officer of the High Court.

13.* Every receiver appointed as aforesaid shall be deemed

Receiver deemed to be to be the agent of the person entitled to the agent of the mortgagor the property subject to the charge, who shall be solely responsible for his acts or defaults unless otherwise provided for in the charge.

14.† Every receiver appointed as aforesaid shall have power

Powers of receiver. to demand and recover and give effectual receipts for all the rents, issues, and profits of the property of which he is appointed receiver by suit, distress, or otherwise, in name either of the person entitled to the property subject to the charge, or of the person entitled to the money secured by the charge, to the full extent of the estate or interest which the person who created the charge had power to dispose of.

15 ‡ Every receiver appointed as aforesaid may be removed

Receiver may be removed, by the like authority, or on the like requisition as before provided with respect to the original appointment of a receiver, and new receivers may be appointed from time to time.

16 § Every receiver appointed as aforesaid shall be entitled

Receiver to receive com- to retain out of any money received by mission not exceeding 5 him, in lieu of all costs, charges, and per cent. expenses whatsoever, such a commission, not exceeding five *per centum* on the gross amount of all money received, as shall be specified in his appointment, and if no amount shall be so specified, then five *per centum* on such gross amount.

* Compare Stat. 23 & 24 Vict., c. 145, s. 18.

† Compare *ibid*, s. 19.

‡ Compare *ibid*, s. 20.

§ Compare *ibid*, s. 21.

ACT NO. IV. OF 1882.*

The Transfer of Property Act, 1882.

RECEIVED THE G.-G.'S ASSENT ON THE 17TH FEBRUARY
1882.

*An act to amend the Law relating to the Transfer of Property by
Act of Parties.*

WHEREAS it is expedient to define and amend certain parts
of the law relating to the transfer of
property by act of parties; It is hereby
enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title. 1. This Act may be called the
"Transfer of Property Act, 1882 :"

Commencement. It shall come into force on the first
day of July 1882 :

Extent. It extends, in the first instance, to the whole of British India
except the territories respectively ad-
ministered by the Governor of Bombay

* For Statement of Objects and Reasons, see *Gazette of India*, 1887, Pt. V., p. 171, for the Preliminary Report of the Select Committee, see *ibid.*, 1878, Pt. V., p. 48, for the further Report of the Select Committee, see *ibid.*, 1879, Pt. V., p. 106, for the Third Report of the Select Committee, see *ibid.*, 1881, Pt. V. p. 395; for Proceedings in Council, see *ibid.*, 1877, Supplement, p. 1568, *ibid.*, 1877, Supplement, p. 1690; *ibid.*, 1882, Supplement, p. 96; *ibid.*, 1882, Supplement, p. 169

The Transfer of Property Act (IV of 1882) does not apply to Crown grants.—See the Crown Grants Act (XV. of 1895), printed at p. 78, *infra*.

Act IV. of 1882 has ceased to be in force in the Naga Hills District (including the Mokokchang Sub-division), the Dibrugarh Frontier Tract, the North Cachar Hills, the Garo Hills, the Khasia and Jaintia Hills, and the Mikir Hills Tract—See Assam Rules Manual, Ed. 1893, pp. 408, 409; 1884, Pt. II., pp. 212 and 705 respectively.

so as to prevent any proceeding for any subsequent breach (unless otherwise specified in such license);

and all rights under covenants and powers of forfeiture and re-entry in the lease contained shall remain in full force, and shall be available as against any subsequent breach of covenant or condition, assignment, under-lease, or other matter not specifically authorized or made dispensable by such license, in the same manner as if no such license had been given; and the condition or right of re-entry shall be and remain in all respects as if such license had not been given, except in respect of the particular matter authorized to be done.

21.* Where in any lease heretofore granted or to be granted hereafter granted, there is or shall be a power or condition of re-entry on assigning or under-letting, or doing any other specified act without license, and a license, at any time after the passing of this Act, shall be given to one of several lessees or co-owners to assign or under-let his share or interest, or to do any other act prohibited to be done without license; or shall be given to any lessee or owner, or any one of several lessees or owners, to assign or under-let part only of the property, or to do any other such act as aforesaid in respect of part only of such property, such license shall not operate to destroy or extinguish the right of re-entry in case of any breach of the covenant or condition by the co-lessee or co-lessees or owner or owners, of the other shares or interests in the property, or by the lessee or owner of the rest of the property (as the case may be) over or in respect of such shares or interests or remaining property, but such right of re-entry shall remain in full force over or in respect of the shares or interests or property not the subject of such license.

22.† Where the reversion upon a lease is severed, and the apportionment of conditions of re-entry in certain cases. rent or other reservation is legally apportioned, the assignee of each part of the reversion shall, in respect of the apportioned rent or other reservation allotted or belonging to him, have and be entitled to the benefit of all conditions or powers of re-entry for non-payment of the original rent or other reservation, in like manner as if such conditions or powers had been reserved to him as incident to his part of the reversion in respect of the apportioned rent or other reservation allotted or belonging to him.

* Compare Stat. 22 and 23 Vict, c. 35, s. 2.

† Compare *ibid*, s. 3.

2. In the territories to which this Act extends for the time being, the enactments specified in the schedule hereto annexed shall be repealed to the extent therein mentioned. But nothing herein contained shall be deemed to affect—

Saving of certain enactments, incidents, rights, liabilities, &c.

(a) the provisions of any enactment not hereby expressly repealed;

(b) any terms or incidents of any contract or constitution of property which are consistent with the provisions of this Act, and are allowed by the law for the time being in force;

(c) any right or liability arising out of a legal relation constituted before this Act comes into force, or any relief in respect of any such right or liability; or

(d) save as provided by section 57 and Chapter IV. of this Act, any transfer by operation of law, or by, or in execution of, a decree or order of a Court of competent jurisdiction, and nothing in the second chapter of this Act shall be deemed to affect any rule of Hindu, Muhammadan, or Buddhist law.

Interpretation-clause.

3. In this Act, unless there is something repugnant in the subject or context,—

“immoveable property.” “immoveable property” does not include standing timber, growing crops, or grass:

“instrument.” “instrument” means a non-testamentary instrument:

“registered” means registered in British India under the law* for the time being in force regulating the registration of documents

“attached to the earth:” “attached to the earth” means—

- (a) rooted in the earth, as in the case of trees and shrubs;
- (b) imbedded in the earth, as in the case of walls or buildings; or
- (c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached:

* See the Indian Registration Act (III. of 1877).

have bequeathed the property so charged to any trustee or trustees for the whole of his estate or interest therein, and shall not have made any express provision for the raising of such debt, legacy, or sum of money out of such property, it shall be lawful for the said legatee or legatees in trust, notwithstanding any trusts actually declared by the testator, to raise such debts, legacy, or money as aforesaid by sale and absolute disposition by public auction or private contract of the said property or any part thereof, or by a mortgage of the same, or partly in one mode and partly in the other ;

and any deed or deeds of mortgage so executed may reserve such rate of interest, and fix such period or periods of repayment, as the person or persons executing the same shall think proper.

26.* The powers conferred by the last-preceding section

Powers given by last section shall extend to all and every person or persons in whom the property bequeathed in trust shall for the time being be vested by survivorship, or under the laws relating to intestate or testamentary succession, or to any person or persons who may be appointed under any power in the will, or by the High Court, to succeed to the trusteeship vested in such legatee or legatees in trust as aforesaid.

27.† If any testator who shall have created such a charge as

Executors to have power of raising money, &c, where there is no sufficient bequest shall become vested in any trustee or trustees, the executor or executors (if any) for the time being named in such will shall have the same or the like power of raising the said moneys as is hereinbefore vested in the legatee or legatees in trust of the said property, and such power shall from time to time devolve on, and become vested in, the person or persons (if any) in whom the executorship shall for the time being be vested.

28.‡ Purchasers or mortgagees shall not be bound to enquire

Purchasers, &c, not bound to enquire as to powers. of them, shall have been duly and correctly exercised by the person or persons acting in virtue thereof.

* Compare Stat 22 & 23 Vict, c. 35, s. 15.

† Compare *ibid*, s. 16.

‡ Compare *ibid*, s. 17.

6. Property of any kind may be transferred except as otherwise provided by this Act, or by any other law for the time being in force.

What may be transferred.

(a) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred.

(b) A mere right of re-entry for breach of a condition subsequent cannot be transferred to any one except the owner of the property affected thereby.

(c) An easement cannot be transferred apart from the dominant heritage.

(d) An interest in property restricted in its enjoyment to the owner personally cannot be transferred by him.

(e) A mere right to sue* cannot be transferred.

(f) A public office cannot be transferred, nor can the salary of a public officer, whether before or after it has become payable.

(g) Stipends allowed to military and civil pensioners of Government and political pensions cannot be transferred.

(h) No transfer can be made (1) in so far as it is opposed to the nature of the interest affected thereby, or (2) *for an unlawful object or consideration within the meaning of section 23 of the Indian Contract Act, 1872,*† or (3) to a person legally disqualified to be transferee

(i) Nothing in this section shall be deemed to authorize a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer, or lessee.‡

7. Every person competent to contract, and entitled to transferable property, or authorized to dispose of transferable property not his

Persons competent to transfer.

* In cl. (e), the words, "for compensation for a fraud or for harm illegally caused," repealed by the Transfer of Property Act (II. of 1900), s. 3 (1), have here been omitted.

† In cl. (h), the italicized words have been substituted for the words, "for an illegal purpose," by the Transfer of Property Act (II. of 1900), s. 3 (ii).

‡ Cl. (i) has been added by the Transfer of Property Act (1882) Amendment Act (III. of 1885), s. 4.

the same in any Government securities, and such trustees shall also be at liberty, at their discretion, to call in any trust-funds invested in any other securities than as aforesaid, and to invest the same on any such securities as aforesaid, and also from time to time, at their discretion, to vary any such investments as aforesaid for others of the same nature :

Provided always that no such original investment as aforesaid and no such change of investment as aforesaid shall be made where there is a person under no disability entitled in possession to receive the income of the trust-fund for his life, or for a term of years determinable with his life, or for any greater estate, without the consent in writing of such person.

Trustees and Executors.

38 *† In all cases where any property is held by trustees in Trusts may apply in trust for a minor, either absolutely or come of property of minors, contingently on his attaining majority, or &c, for their maintenance on the occurrence of any event previously to his attaining majority, it shall be lawful for such trustees, at their sole discretion, to pay to the guardians (if any) of such minor, or otherwise to apply for or towards the maintenance or education of such minor, the whole or any part of the income to which such minor may be entitled in respect of such property, whether there be any other fund applicable to the same purpose, or any other person bound by law to provide for such maintenance or education, or not ;

and such trustees shall accumulate all the residue of such income by way of compound interest, by investing the same and the resulting income thereof from time to time in proper securities for the benefit of the person who shall ultimately become entitled to the property from which such accumulations shall have arisen :

Provided always that it shall be lawful for such trustees at any time, if it shall appear to them expedient, to apply the whole or any part of such accumulations as if the same were part of the income arising in the then current year.

* Ss. 32 to 37 shall be repealed in the territories to which the Indian Trusts Act (II. of 1882) for the time being extends or is extended.—*Sees. 2. of that Act.*

† Compare Stat. 23 & 24 Vict., c. 145, s. 26.

11. Where, on a transfer of property, an interest therein is created absolutely in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction.

Nothing in this section shall be deemed to affect the right to restrain, for the beneficial enjoyment of one piece of immoveable property, the enjoyment of another piece of such property, or to compel the enjoyment thereof in a particular manner.

12. Where property is transferred subject to a condition or limitation, making any interest therein reserved or given to or for the benefit of any person to cease on his becoming insolvent, or endeavouring to transfer or dispose of the same, such condition or limitation is void.

Nothing in this section applies to a condition in a lease for the benefit of the lessor or those claiming under him.

13. Where, on a transfer of property, an interest therein is created for the benefit of a person not in existence at the date of the transfer, subject to a prior interest created by the same transfer, the interest created for the benefit of such person shall not take effect unless it extends to the whole of the remaining interest of the transferor in the property.

Illustration.

A transfers property, of which he is the owner, to B, in trust for A and his intended wife successively for their lives, and, after the death of the survivor, for the eldest son of the intended marriage for life, and after his death for A's second son. The interest so created for the benefit of the eldest son does not take effect, because it does not extend to the whole of A's remaining interest in the property.

14. No transfer of property can operate to create an interest which is to take effect after the lifetime of one or more persons living at the date of such transfer, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the interest created is to belong.

shall, in all respects, act as if he had been originally nominated a trustee by the deed, will, or other instrument (if any) creating the trust.

The Official Trustee may, with his consent, and by the order of Appointment of Official the High Court, be appointed under Trustee to be a trustee this section in any case in which only one trustee is to be appointed, and such trustee is to be the sole trustee.

35*† The power of appointing new trustees herebefore contained may be exercised in cases Appointment in place of trustee predeceasing testator, where a trustee nominated in a will has died in the lifetime of the testator.

36†‡ The receipts in writing of any trustees or trustee for Trustee's receipts to be any money payable to them or him by discharges, or in the exercise, of any trusts or powers reposed or vested in them or him, shall be sufficient discharges for the money therein expressed to be received, and shall effectually exonerate the persons paying such money from seeing to the application thereof, or from being answerable for any loss or misapplication thereof.

37.†§ Every deed, will, or other instrument creating a trust, Every trust-instrument deemed to contain clauses for indemnity and reimbursement of trustees. either expressly or by implication, shall, without prejudice to the clauses actually contained therein, be deemed to contain a clause in the words, or to the effect, following, that is to say—

“that the trustees or trustee for the time being of the said deed, will, or other instrument shall be respectively chargeable only for such moneys, stocks, funds, and securities as they shall respectively actually receive, notwithstanding their respectively signing any receipt for the sake of conformity, and shall be answerable and accountable only for their own acts, receipts, neglects, or defaults, and not for those of each other, nor for any banker, broker, or other person with whom any trust-moneys or securities may be deposited, nor for the insufficiency or deficiency of any stocks, funds, or securities, nor for any other loss, unless the same

* Compare Stat. 23 & 24 Vict., c. 145, s. 28.

† See foot-note (*) at p. 13, *supra*.

‡ Compare Stat. 23 & 24 Vict., c. 145, s. 29.

§ Compare *ibid.*, s. 30.

ment thereof is postponed, or whereby a prior interest in the said property is given or reserved to some other person, or where the income arising from the property is directed to be accumulated until the time of enjoyment arrives, or from a provision that, if a particular event shall happen, the interest shall pass to another person.

20. Where, on a transfer of property, an interest therein

When unborn person acquires vested interest on transfer for his benefit. created for the benefit of a person then living, he acquires upon his birth unless a contrary intention appears from the terms of the transfer, a vested interest, although he may not be entitled to the enjoyment thereof immediately on his birth.

21. Where, on a transfer of property, an interest therein

Contingent interest. created in favour of a person to take effect only on the happening of a specified uncertain event, or if a specified uncertain event shall not happen, such person thereby acquires a contingent interest in the property. Such interest becomes a vested interest in the former case, on the happening of the event; in the latter, when the happening of the event becomes impossible.

Exception.—Where, under a transfer of property, a person becomes entitled to an interest therein upon attaining a particular age, and the transferor also gives to him absolutely the income to arise from such interest before he reaches that age, or directs the income, or so much thereof as may be necessary, to be applied for his benefit, such interest is not contingent.

22. Where, on a transfer of property, an interest therein

Transfer to members of a class who attain a particular age. in is created in favour of such members only of a class as shall attain a particular age, such interest does not vest in any member of the class who has not attained that age.

23. Where, on a transfer of property, an interest therein is

Transfer contingent on happening of specified uncertain event. to accrue to a specified person if a specified uncertain event shall happen, and no time is mentioned for the occurrence of that event, the interest fails unless such event happens before, or at the same time as, the intermediate or precedent interest ceases to exist.

further part (as the case may be) of the estate of the deceased to meet any future liability under the said lease or agreement for a lease

The executor or administrator so distributing the residuary estate shall not, after having assigned the said lease or agreement for a lease, and having, where necessary, set apart such sufficient fund as aforesaid be personally liable in respect of any subsequent claim under the said lease or agreement for a lease.

Nothing herein contained shall prejudice the right of the lessor or those claiming under him to follow the assets of the deceased into the hands of the person or persons to or amongst whom the said assets may have been distributed.

41.* In like manner, where a testator or administrator, liable

As to liability of executor, &c., in respect of rents, &c., in conveyance on rent-charge as such to the rent, covenants, or agreements contained in any conveyance on chief rent or rent-charge (whether such rent be by limitation of use, grant, or reservation), or agreement for such conveyance, granted or assigned to, or made and entered into with, the testator or intestate whose estate is being administered, shall have satisfied all such liabilities under the said conveyance or agreement for a conveyance as may have accrued due and been claimed up to the time of the conveyance hereinafter mentioned, and shall have set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the grantee to be laid out on the property conveyed, or agreed to be conveyed, although the period for laying out the same may not have arrived, and shall have conveyed such property, or assigned the said agreement for such conveyance as aforesaid, to a purchaser thereof, he shall be at liberty to distribute the residuary estate of the deceased to and amongst the parties entitled thereto, respectively, without appropriating any part or any further part (as the case may be) of such estate to meet any future liability under the said conveyance or agreement for a conveyance.

The executor or administrator so distributing the residuary estate shall not, after having made or executed such conveyance or assignment, and having, where necessary, set apart such sufficient fund as aforesaid, be personally liable in respect of any subsequent claim under the said conveyance or agreement for conveyance.

* Compare Stat 22 & 23 Vict., c 35, s 28

27. Where, on a transfer of property, an interest therein is created in favour of one person, and, by the same transaction, an ulterior disposition of the same interest is made in favour of another, if the prior disposition under the transfer shall fail, the ulterior disposition shall take effect upon the failure of the prior disposition, although the failure may not have occurred in the manner contemplated by the transferor.

Conditional transfer to one person coupled with transfer to another on failure of prior disposition.

But, where the intention of the parties to the transaction is that the ulterior disposition shall take effect only in the event of the prior disposition failing in a particular manner, the ulterior disposition shall not take effect unless the prior disposition fails in that manner.

Illustrations.

(a.) A transfers Rs 500 to B on condition that he shall execute a certain lease within 3 months after A's death, and if he should neglect to do so, to C. B dies in A's lifetime. The disposition in favour of C takes effect.

(b.) A transfers property to his wife; but, in case she should die in his lifetime, transfers to B that which he had transferred to her. A and his wife perish together under circumstances which make it impossible to prove that she died before him. The disposition in favour of B does not take effect.

28. On a transfer of property, an interest therein may be created to accrue to any person with the condition superadded that, in case a specified uncertain event shall happen, such interest shall pass to another person, or that, in case a specified uncertain event shall not happen, such interest shall pass to another person. In each case the dispositions are subject to the rules contained in sections 10, 12, 21, 22, 23, 24, 25, and 27.

29. An ulterior disposition of the kind contemplated by the last preceding section cannot take effect unless the condition is strictly fulfilled.

Fulfilment of condition subsequent.

Illustration.

A transfers Rs. 500 to B to be paid to him on his attaining his majority or marrying, with a proviso that, if B dies a minor, or marries without C's consent, the Rs. 500 shall go to D. B marries, when only 17 years of age, without C's consent. The transfer to D takes effect.

The *trustee*, executor, or administrator acting upon the opinion, advice, or direction given by the said Judge, shall be deemed, so far as regards his own responsibility, to have discharged his duty as such *trustee*, executor, or administrator in the subject-matter of the said application :

Provided, nevertheless, that this Act shall not extend to indemnify any *trustee*, executor, or administrator, in respect of any act done in accordance with such opinion, advice, or direction as aforesaid, if such *trustee*, executor, or administrator shall have been guilty of any fraud or wilful concealment or misrepresentation in obtaining such opinion, advice, or direction; and the costs of such application as aforesaid shall be in the discretion of the Judge to whom the said application shall be made.

General Provisions.

44.* For the purposes of this Act, a person shall be deemed Tenants for life, &c., to be entitled to the possession, or to may execute powers not- the receipt of the rents and income, of withstanding incumbrances. immoveable or moveable property, although his estate may be charged or incumbered, either by himself, or by any former owner, or otherwise howsoever to any extent ; but the estates or interests of the parties entitled to any such charge or incumbrance shall not be affected by the acts of the person entitled to the possession or to the receipt of the rents and income as aforesaid unless they shall concur therein.

45.† The provisions contained in this Act shall, except as hereinbefore otherwise provided, extend only to persons entitled or acting under a deed, will, codicil, or other instrument executed after this Act comes into operation, or under a will or codicil confirmed or revived by a codicil executed after that date, and only to property in British India, and to cases to which English law is applicable.

Short title.

46. This Act may be called the "Trustees' and Mortgagees' Powers Act, 1866."

* Compare Stat. 22 & 23 Vict., c. 35, s. 31

† Compare Stat. 23 & 24 Vict., c. 145, s. 34.

the fraud of a person who would be directly benefited by non-fulfilment of the condition, such further time shall, as against him, be allowed for performing the act as shall be requisite to make up for the delay caused by such fraud. But, if no time is specified for the performance of the act, then, if its performance is by the fraud of a person interested in the non-fulfilment of the condition, rendered impossible or indefinitely postponed, the condition shall, as against him, be deemed to have been fulfilled.

Election.

35. Where a person professes to transfer property which he has no right to transfer, and, as part of the same transaction, confers any benefit on the owner of the property, such owner must elect either to confirm such transfer, or to dissent from it; and, in the latter case, he shall relinquish the benefit so conferred, and the benefit so relinquished shall revert to the transferor or his representative as if it had not been disposed of,

subject nevertheless,

where the transfer is gratuitous, and the transferor has, before the election, died or otherwise become incapable of making a fresh transfer,

and in all cases where the transfer is for consideration,

to the charge of making good to the disappointed transferee the amount or value of the property attempted to be transferred to him.

Illustration.

The farm of Sultanpur is the property of C, and worth Rs. 800. A, by an instrument of gift, professes to transfer it to B, giving by the same instrument Rs. 1,000 to C, C elects to retain the farm. He forfeits the gift of Rs. 1,000.

In the same case, A dies before the election. His representative must, out of the Rs. 1,000, pay Rs. 800 to B.

The rule in the first paragraph of this section applies whether the transferor does or does not believe that which he professes to transfer to be his own.

A person taking no benefit directly under a transaction, but deriving a benefit under it indirectly, need not elect.

A person who, in his one capacity, takes a benefit under the transaction, may, in another, dissent therefrom.

THE INDIAN TRUSTS ACT

(Act II. of 1882).

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entitled to receive such payments, be deemed, as between the transferor and the transferee, to accrue due from day to day, and to be apportionable accordingly, but to be payable on the days appointed for the payment thereof.

37. When, in consequence of a transfer, property is divided and held in several shares, and thereupon apportionment of benefit and obligation on severance. the benefit of any obligation relating to the property as a whole passes from one to several owners of the property, the corresponding duty shall, in the absence of a contract to the contrary amongst the owners, be performed in favour of each of such owners in proportion to the value of his share in the property, provided that the duty can be severed, and that the severance does not substantially increase the burden of the obligation; but, if the duty cannot be severed, or if the severance would substantially increase the burden of the obligation, the duty shall be performed for the benefit of such one of the several owners as they shall jointly designate for that purpose:

Provided that no person on whom the burden of the obligation lies shall be answerable for failure to discharge it in manner provided by this section unless and until he has had reasonable notice of the severance.

Nothing in this section applies to leases for agricultural purposes unless and until the Local Government, by notification in the official Gazette, so directs.

Illustrations.

(a.) A sells to B, C, and D a house situate in a village, and leased to E at an annual rent of Rs. 30 and delivery of one fat sheep, B having provided half the purchase-money, and C and D one quarter each. E, having notice of this, must pay Rs. 15 to B, Rs. 7½ to C, and Rs. 7½ to D, and must deliver the sheep according to the joint direction of B, C, and D.

(b.) In the same case, each house in the village being bound to provide 10 days' labour each year on a dyke to prevent inundation, E had agreed, as a term of his lease, to perform this work for A. B, C, and D severally require E to perform the ten days' work due on account of the house of each. E is not bound to do more than ten days' work in all according to such directions as B, C, and D may join in giving.

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such right or obligation may be enforced against a transferee with notice thereof or a gratuitous transferee of the property affected thereby, but not against a transferee for consideration and without notice of the right or obligation, nor against such property in his hands

Illustration.

A contracts to sell Sultanpur to B. While the contract is still in force, he sells Sultanpur to C, who has notice of the contract. B may enforce the contract against C to the same extent as against A.

41. Where, with the consent, express or implied, of the persons

Transfer by ostensible owner. interested in immoveable property, a person is the ostensible owner of such property, and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorized to make it, provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith.

42. Where a person transfers any immoveable property

Transfer by person having authority to revoke former transfer. reserving power to revoke the transfer, and subsequently transfers the property for consideration to another transferee, such transfer operates in favour of such transferee (subject to any condition attached to the exercise of the power) as a revocation of the former transfer to the extent of the power.

Illustration

A lets a house to B, and reserves power to revoke the lease, if, in the opinion of a specified surveyor, B should make a use of it detrimental to its value. Afterwards A, thinking that such a use has been made, lets the house to C. This operates as a revocation of B's lease subject to the opinion of the surveyor as to B's use of the house having been detrimental to its value.

43. Where a person erroneously represents that he is authoriz-

Transfer by unauthorized person who subsequently acquires interest in property transferred. ed to transfer certain immoveable property, and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property, at any time during which the contract of transfer subsists.

Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.

3. A "trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner :

the person who reposes or declares the confidence is called
 "author of the trust : " the "author of the trust;" the person
 "trustee : " who accepts the confidence is called the
 "beneficiary : " "trustee;" the person for whose benefit
 "trust-property : " the confidence is accepted is called the
 "beneficial interest : " "beneficiary;" the subject-matter of the
 trust is called "trust-property" or "trust-money;" the "beneficial
 interest" or "interest" of the beneficiary is his right against the
 trustee as owner of the trust-property; and the instrument (if any)
 "instrument of trust : " by which the trust is declared is called
 the "instrument of trust : "

a breach of any duty imposed on a trustee, as such; by any
 "breach of trust : " law for the time being in force, is called
 a "breach of trust : "

and in this Act, unless there be something repugnant in the
 "registered : " subject or context, "registered" means
 registered under the law for the registra-
 tion of documents for the time being in force: a person is said 'to
 "notice." have "notice" of fact either when he
 actually knows that fact, or when, but

for wilful abstention from inquiry or gross negligence, he would
 have known it, or when information of the fact is given to, or obtain-
 ed by his agent, under the circumstances mentioned in the Indian

Expressions defined in Act Contract Act, 1872,* section 220; and
 IX. of 1872. all expressions used herein, and defined
 in the Indian Contract Act, 1872,* shall be deemed to have the
 meanings respectively attributed to them by that Act.

* Act IX of 1872.

CHAPTER II.

OF THE CREATION OF TRUSTS.

4. A trust may be created for any lawful purpose. The pur-
 Lawful purpose. pose of a trust is lawful unless it is (a)
 forbidden by law, or (b) is of such a
 nature that, if permitted, it would defeat the provisions of any law,

Illustrations.

(a.) A, owning a moiety, and B and C, each a quarter share, of mouza Sultanpur, exchange an eighth share of that mouza for a quarter share of mouza Lalpura. There being no agreement to the contrary, A is entitled to an eighth share in Lalpura, and B and C each to a sixteenth share in that mouza.

(b.) A, being entitled to a life-interest in mouza Atrali, and B and C, to the reversion, sell the mouza for Rs. 1,000. A's life-interest is ascertained to be worth Rs. 600; the reversion, Rs. 400. A is entitled to receive Rs. 600 out of the purchase-money, B and C to receive Rs. 400.

47. Where several co-owners of immoveable property transfer

Transfer by co-owners of a share therein without specifying that share in common property. the transfer is to take effect on any particular share or shares of the transferors, the transfer, as among such transferors, takes effect on such shares equally where the shares were equal, and, where they were unequal, proportionately to the extent of such shares.

Illustration.

A, the owner of an eight-anna share, and B and C, each the owner of a four-anna share, in mouza Sultanpur, transfer a two-anna share in the mouza to D, without specifying from which of their several shares the transfer is made. To give effect to the transfer, one-anna share is taken from the share of A, and half-anna share from each of the shares of B and C.

48. Where a person purports to create by transfer at different

Priority of rights created times rights in or over the same immoveable property, and such rights cannot all by transfer. exist or be exercised to their full extent together, each later-created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created.

49. Where immoveable property is transferred for consider-

Transferee's right under ation, and such property or any part thereof is, at the date of the transfer, insured against loss or damage by fire, the transferee, in case of such loss or damage, may, in the absence of a contract to the contrary, require any money which the transferor actually receives under the policy, or so much thereof as may be necessary, to be applied in reinstating the property.

50. No person shall be chargeable with any rents or profits

Rent *bond fide* paid to of any immoveable property which he holder under defective title. has, in good faith, paid or delivered to

(d) A bequeaths certain property to B, "hoping he will continue it in the family " This does not create a trust, as the beneficiary is not indicated with reasonable certainty.

(e) A bequeaths certain property to B, requesting him to distribute it amongst such members of C's family as B should think most deserving; This does not create a trust, for the beneficiaries are not indicated with reasonable certainty.

(f) A bequeaths certain property to B, desiring him to divide the bulk of it among C's children This does not create a trust, for the trust-property is not indicated with sufficient certainty

(g) A bequeaths a shop and stock-in-trade to B on condition that he pays A's debts and a legacy to C. This is a condition, not a trust for A's creditors and C

Who may create trusts. 7. A trust may be created—

(a) by every person competent to contract, and,

(b) with the permission of a principal Civil Court of original jurisdiction, by or on behalf of a minor;

but subject in each case to the law for the time being in force as to the circumstances and extent in and to which the author of the trust may dispose of the trust-property.

8. The subject-matter of a trust must be property transferable to the beneficiary.

Subject of trust.

It must not be a merely beneficial interest under a subsisting trust.

9. Every person capable of holding property may be a beneficiary.

Who may be beneficiary.

A proposed beneficiary may renounce his interest under the trust by disclaimer addressed to the trustee, or by setting up, with notice of the trust, a claim inconsistent therewith.

Disclaimer by beneficiary.

10. Every person capable of holding property may be a trustee; but where the trust involves the exercise of discretion, he cannot execute it unless he is competent to contract.

Who may be trustee.

No one bound to accept trust.

No one is bound to accept a trust.

A trust is accepted by any words or acts of the trustee indicating with reasonable certainty such acceptance.

Acceptance of trust.

Where the effect of any transfer of immoveable property is to defraud, defeat, or delay any such person, and such transfer is made gratuitously, or for a grossly inadequate consideration, the transfer may be presumed to have been made with such intent as aforesaid.

Nothing contained in this section shall impair the rights of any transferee in good faith and for consideration.

CHAPTER III.

OF SALES OF IMMOVEABLE PROPERTY.

54. "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.
 "Sale" defined.

Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.*
 Sale how made.

In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.*

Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties.
 Contract for sale.

It does not, of itself, create any interest in, or charge on, such property.

55. In the absence of a contract to the contrary, the buyer and the seller of immoveable property respectively are subject to the liabilities,
 Rights and liabilities of buyer and seller.

* Paras 2 and 3 of s. 54 extend to every cantonment in British India.—See the Cantonments Act (XIII. of 1889), s. 32 (1) These paragraphs shall not extend or be extended to any district or tract of country for the time being excluded from the operation of the Indian Registration Act (III. of 1877) under the power conferred by the first section of that Act or otherwise.—See s. 1, *supra*.

Illustrations.

(a) A, a trustee, is simply authorized to sell certain land by public auction: He cannot sell the land by private contract.

(b) A, a trustee of certain land for X, Y, and Z, is authorized to sell the land to B for a specified sum. X, Y, and Z, being competent to contract, consent that A may sell the land to C for a less sum: A may sell the land accordingly

(c) A, a trustee for B and her children, is directed by the author of the trust to lend on B's request, trust-property to B's husband, C, on the security of his bond. C becomes insolvent, and B requests A to make the loan: A may refuse to make it

12. A trustee is bound to acquaint himself, as soon as pos-

sible, with the nature and circumstances of state of trust-property. of the trust-property, to obtain, where necessary, a transfer of the trust-property to himself, and (subject to the provisions of the instrument of trust) to get in trust-moneys invested on insufficient or hazardous security.

Illustrations.

(a) The trust-property is a debt outstanding on personal security. The instrument of trust gives the trustee no discretionary power to leave the debt so outstanding: The trustee's duty is to recover the debt without unnecessary delay

(b) The trust-property is money in the hands of one of two co-trustees. No discretionary power is given by the instrument of trust. The other co-trustee must not allow the former to retain the money for a longer period than the circumstances of the case required.

13 A trustee is bound to maintain and defend all such suits,

Trustee to protect title to and (subject to the provisions of the instrument of trust) to take such other steps as, regard being had to the nature and amount or value of the trust-property, may be reasonably requisite for the preservation of the trust-property and the assertion or protection of the title thereto

Illustration

The trust-property is immoveable property which has been given to the author of the trust by an unregistered instrument. Subject to the provisions of the Indian Registration Act, 1877,* the trustee's duty is to cause the instrument to be registered

14. The trustee must not, for himself or another, set up or

aid any title to the trust-property adverse to beneficiary. Trustee nor to set up title and any title to the trust-property adverse to beneficiary.

* Act III. of 1877.

The benefit of the contract mentioned in this rule shall be annexed to, and shall go with, the interest of the transferee as such, and may be enforced by every person in whom that interest is, for the whole or any part thereof, from time to time, vested.

(3.) Where the whole of the purchase-money has been paid to the seller, he is also bound to deliver to the buyer all documents of title relating to the property which are in the seller's possession or power:

Provided that (a), where the seller retains any part of the property comprised in such documents, he is entitled to retain them all, and (b), where the whole of such property is sold to different buyers, the buyer of the lot of greatest value is entitled to such documents. But, in case (a), the seller, and in case (b), the buyer of the lot of greatest value, is bound, upon every reasonable request by the buyer, or by any of the other buyers, as the case may be, and at the cost of the person making the request, to produce the said documents, and furnish such true copies thereof or extracts therefrom as he may require; and, in the meantime, the seller, or the buyer of the lot of greatest value, as the case may be, shall keep the said documents safe, uncanceled, and undefaced, unless prevented from so doing by fire or other inevitable accident.

(4.) The seller is entitled—

(a) to the rents and profits of the property till the ownership thereof passes to the buyer;

(b) where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer for the amount of the purchase-money or any part thereof remaining unpaid, and for interest on such amount or part.

(5.) The buyer is bound—

(a) to disclose to the seller any fact as to the nature or extent of the seller's interest in the property of which the buyer is aware, but of which he has reason to believe that the seller is not aware, and which materially increases the value of such interest:

(b) to pay or tender, at the time and place of completing the sale, the purchase-money to the seller or such

Illustrations.

(a) A bequeaths to B all his property in trust for C during his life, and on his death for D and on D's death for E. A's property consists of three leasehold houses, and there is nothing in A's will to show that he intended the houses to be enjoyed in specie: B should sell the houses, and invest the proceeds in accordance with section 20.

(b) A bequeaths to B his three leasehold houses in Calcutta and all the furniture therein in trust for C during his life, and on his death for D, and on D's death for E. Here an intention that the houses and furniture should be enjoyed in specie appears clearly, and B should not sell them.

17. Where there are more beneficiaries than one, the trustee is bound to be impartial, and must not execute the trust for the advantage of one at the expense of another.

Where the trustee has a discretionary power, nothing in this section shall be deemed to authorize the Court to control the exercise, reasonably and in good faith, of such discretion.

Illustration.

A, a trustee for B, C, and D, is empowered to choose between several specified modes of investing the trust-property. A, in good faith, chooses one of these modes. The Court will not interfere although the result of the choice may be to vary the relative rights of B, C, and D.

18. Where the trust is created for the benefit of several persons in succession, and one of them is in possession of the trust-property, if he commits, or threatens to commit, any act which is destructive or permanently injurious thereto, the trustee is bound to take measures to prevent such act.

19. A trustee is bound (a) to keep clear and accurate accounts of the trust-property, and (b), at all reasonable times, at the request of the beneficiary, to furnish him with full and accurate information as to the amount and state of the trust-property.

20. Where the trust-property consists of money, and cannot be applied immediately or at an early date to the purposes of the trust, the trustee is bound (subject to any direction contained in the instrument of trust) to invest the money on the following securities, and on no others :—

entitled to have the charge satisfied out of the other property, so far as such property will extend.

Discharge of Incumbrances on Sale.

57. (a) Where immoveable property subject to any incumbrance, whether immediately payable or not, is sold by the Court, or in execution of a decree, or out of Court, the Court may, if it thinks fit, on the application of any party to the sale, direct or allow payment into Court,—

(1) in the case of an annual or monthly sum charged on the property, or of a capital sum charged on a determinable interest in the property,—of such amount as, when invested in securities of the Government of India, the Court considers will be sufficient, by means of the interest thereof, to keep down, or otherwise provide for, that charge, and,

(2) in any other case of a capital sum charged on the property,—of the amount sufficient to meet the incumbrance and any interest due thereon.

But, in either case, there shall also be paid into Court such additional amount as the Court considers will be sufficient to meet the contingency of further costs, expenses, and interest, and any other contingency except depreciation of investments, not exceeding one-tenth part of the original amount to be paid in, unless the Court, for special reasons (which it shall record), thinks fit to require a larger additional amount.

(b) Thereupon the Court may, if it thinks fit, and after notice to the incumbrancer, unless the Court, for reasons to be recorded in writing, thinks fit to dispense with such notice, declare the property to be freed from the incumbrance, and make any order for conveyance, or vesting order, proper for giving effect to the sale, and give directions for the retention and investment of the money in Court.

(c) After notice served on the persons interested in, or entitled to, the money or fund in Court, the Court may direct payment or transfer thereof to the persons entitled to receive or give a discharge for the same, and generally may give directions respecting the application or distribution of the capital or income thereof.

22. Where a trustee, directed to sell within a specified time, Sale by trustee directed extends such time, the burden of proving, to sell within specified time. as between himself and the beneficiary, that the latter is not prejudiced by the extension, lies upon the trustee unless the extension has been authorized by a principal Civil Court of original jurisdiction.

Illustration

A bequeaths property to B, directing him, with all convenient speed and within five years, to sell it, and apply the proceeds for the benefit of C. In the exercise of reasonable discretion, B postpones the sale for six years. The sale is not thereby rendered invalid, but C, alleging that he has been injured by the postponement, institutes a suit against B to obtain compensation. In such suit the burden of proving that C has not been injured lies on B.

23. Where the trustee commits a breach of trust, he is liable Liability for breach of to make good the loss which the trust-trust. property or the beneficiary has thereby sustained, unless the beneficiary has, by fraud, induced the trustee to commit the breach, or the beneficiary, being competent to contract, has himself, without coercion or undue influence having been brought to bear on him, concurred in the breach, or subsequently acquiesced therein, with full knowledge of the facts of the case, and of his rights as against the trustee.

A trustee committing a breach of trust is not liable to pay interest except in the following cases:—

- (a) where he has actually received interest ;
- (b) where the breach consists in unreasonable delay in paying trust-money to the beneficiary ;
- (c) where the trustee ought to have received interest, but has not done so ;
- (d) where he may be fairly presumed to have received interest .

He is liable, in case (a), to account for the interest actually received, and in cases (b), (c), and (d), to account for simple interest at the rate of six per cent per annum unless the Court otherwise directs.

(e) Where the breach consists in failure to invest trust-money, and to accumulate the interest or dividends thereon, he is liable to account for compound interest (with half-yearly rests) at the same rate.

on condition that, on such payment being made, the sale shall become void, or

on condition that, on such payment being made, the buyer shall transfer the property to the seller,

the transaction is called a mortgage by conditional sale, and the mortgagee a mortgagee by conditional sale.

(d) Where the mortgagor delivers possession of the mortgaged property to the mortgagee, and authorizes him to retain such possession until payment of the mortgage-money, and to receive the rents and profits accruing from the property, and to appropriate them in lieu of interest, or in payment of the mortgage-money, or partly in lieu of interest, and partly in payment of the mortgage-money, the transaction is called a usufructuary mortgage, and the mortgagee a usufructuary mortgagee.

(e) Where the mortgagor binds himself to repay the mortgage-money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, but subject to a proviso that he will re-transfer it to the mortgagor upon payment of the mortgage-money as agreed, the transaction is called an English mortgage.

59.* Where the principal money secured is one hundred rupees or upwards, a mortgage can be effected only by a registered instrument signed by the mortgagor, and attested by at least two witnesses.

Where the principal money secured is less than one hundred rupees, a mortgage may be effected either by "a registered instrument"† signed and attested as aforesaid, or (except in the case of a simple mortgage) by delivery of the property.

Nothing in this section shall be deemed to render invalid mortgages made in the towns of Calcutta, Madras, Bombay, Karachi, "Rangoon, Moulmein, Bassein, and Akyab,"‡ by delivery to a creditor or his agent of documents of title to immoveable property, with intent to create a security thereon.

* S 59 extends to every cantonment in British India.—See the Cantonments Act (XIII. of 1889), s 32 (1) S 59 shall not extend, or be extended, to any district or tract of country for the time being excluded from the operation of the Indian Registration Act under the power conferred by the first section of that Act, or otherwise.—See s 1, *supra*

† The words quoted have been substituted for the words "an instrument" by Act VI. of 1904, s 3.

‡ These quoted words have been substituted for the original ones—"and Rangoon"—by s. 4 of Act VI. of 1904.

24 A trustee, who is liable for a loss occasioned by a breach of trust in respect of one portion of the trust-property, cannot set off against his liability a gain which has accrued to another portion of the trust-property through another and distinct breach of trust.

25 Where a trustee succeeds another, he is not, as such, liable for the acts or defaults of his predecessors.

26. Subject to the provisions of sections 13 and 15, one trustee is not, as such, liable for a breach of trust committed by his co-trustee:

Provided that, in the absence of an express declaration to the contrary in the instrument of trust, a trustee is so liable—

(a) where he has delivered trust-property to his co-trustee without seeing to its proper application :

(b) where he allows his co-trustee to receive trust-property, and fails to make due enquiry as to the co-trustee's dealings there-with, or allows him to retain it longer than the circumstances of the case reasonably require .

(c) where he becomes aware of a breach of trust committed or intended by his co-trustee, and either actively conceals it, or does not, within a reasonable time, take proper steps to protect the beneficiary's interest.

A co-trustee, who joins in signing a receipt for trust-property, and proves that he has not received the same, is not answerable, by reason of such signature only, for loss or misapplication of the property by his co-trustee.

Illustration

A bequeaths certain property to B and C, and directs them to sell it, and invest the proceeds for the benefit of D. B and C accordingly sell the property, and the purchase-money is received by B, and retained in his hands. C pays no attention to the matter for two years, and then calls on B to make the investment. B is unable to do so, becomes insolvent, and the purchase money is lost. C may be compelled to make good the amount.

27. Where co-trustees jointly commit a breach of trust, or where one of them, by his neglect, enables the other to commit a breach of

Right of usufructuary mortgagor to recover possession.

62. In the case of a usufructuary mortgage, the mortgagor has a right to recover possession of the property—

- (a) where the mortgagee is authorized to pay himself the mortgage-money from the rents and profits of the property—when such money is paid ;
- (b) where the mortgagee is authorized to pay himself from such rents and profits the interest of the principal money—when the term (if any) prescribed for the payment of the mortgage-money has expired, and the mortgagor pays or tenders to the mortgagee the principal money, or deposits it in Court as hereinafter provided.

63. Where mortgaged property in possession of the mortgagee has, during the continuance of the mortgage, received any accession, the mortgagor, upon redemption, shall, in the absence of a contract to the contrary, be entitled, as against the mortgagee, to such accession.

Where such accession has been acquired at the expense of the mortgagee, and is capable of separate possession or enjoyment without detriment to the principal property, the mortgagor desiring to take the accession must pay to the mortgagee the expense of acquiring it. If such separate possession or enjoyment is not possible, the accession must be delivered with the property, the mortgagor being liable, in the case of an acquisition necessary to preserve the property from destruction, forfeiture, or sale, or made with his assent, to pay the proper cost thereof, as an addition to the principal money, at the same rate of interest.

In the case last mentioned, the profits, if any, arising from the accession, shall be credited to the mortgagor.

64. Where the mortgage is usufructuary, and the accession has been acquired at the expense of the mortgagee, the profits, if any, arising from the accession, shall, in the absence of a contract to the contrary, be set off against interest, if any, payable on the money so expended.

64. Where the mortgaged property is a lease for a term of years, and the mortgagee obtains a renewal of the lease, the mortgagor, upon redemption, shall, in the absence of a contract by him to the contrary, have the benefit of the new lease.

32. Every trustee may reimburse himself, or pay or discharge out of the trust-property, all expenses properly incurred in or about the execution of the trust, or the realisation, preservation, or benefit of the trust-property, or the protection or support of the beneficiary.

If he pays such expenses out of his own pocket, he has a first charge upon the trust-property for such expenses and interest thereon ; but such charge (unless the expenses have been incurred with the sanction of a principal Civil Court of original jurisdiction) shall be enforced only by prohibiting any disposition of the trust-property without previous payment of such expenses and interest.

If the trust-property fail, the trustee is entitled to recover, from the beneficiary personally on whose behalf he acted, and at whose request, expressed or implied, he made the payment, the amount of such expenses.

Where a trustee has, by mistake, made an over-payment to the beneficiary, he may reimburse the trust-property out of the beneficiary's interest. If such interest fail, the trustee is entitled to recover, from the beneficiary personally, the amount of such over-payment.

33. A person other than a trustee, who has gained an advantage from a breach of trust, must indemnify the trustee to the extent of the amount actually received by such person under the breach, and, where he is a beneficiary, the trustee has a charge on his interest for such amount.

Nothing in this section shall be deemed to entitle a trustee to be indemnified who has, in committing the breach of trust, been guilty of fraud.

34. Any trustee may, without instituting a suit, apply by petition to a principal Civil Court of original jurisdiction for its opinion, advice, or direction on any present questions respecting the management or administration of the trust-property, other than questions of detail, difficulty, or importance not proper, in the opinion of the Court, for summary disposal.

A copy of such petition shall be served upon, and the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks fit.

66. A mortgagor in possession of the mortgaged property is not liable to the mortgagee for allowing the property to deteriorate; but he must not commit any act which is destructive or permanently injurious thereto if the security is insufficient, or will be rendered insufficient by such act.

Explanation.—A security is insufficient within the meaning of this section unless the value of the mortgaged property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the amount for the time being due on the mortgage.

Rights and Liabilities of Mortgagees.

67. In the absence of a contract to the contrary, the mortgagee has, at any time after the mortgage-money has become payable to him, and before a decree has been made for the redemption of the mortgaged property, or the mortgage-money has been paid or deposited as hereinafter provided, a right to obtain from the Court an order that the mortgagor shall be absolutely debarred of his right to redeem the property, or an order that the property be sold.

A suit to obtain an order that a mortgagor shall be absolutely debarred of his right to redeem the mortgaged property is called a suit for foreclosure.

Nothing in this section shall be deemed—

- (a) to authorize a simple mortgagee as such to institute a suit for foreclosure, or a usufructuary mortgagee, as such, to institute a suit for foreclosure or sale, or a mortgagee by conditional sale, as such, to institute a suit for sale; or
- (b) to authorize a mortgagor who holds the mortgagee's rights as his trustee or legal representative, and who may sue for a sale of the property, to institute a suit for foreclosure; or
- (c) to authorize the mortgagee of a railway, canal, or other work in the maintenance of which the public are interested, to institute a suit for foreclosure or sale; or
- (d) to authorize a person interested in part only of the mortgage-money to institute a suit relating only to a corresponding part of the mortgaged property unless the mortgagees have, with the consent of the mortgagor, severed their interests under the mortgage.

in, or as to which the contract is so rescinded, without being responsible to the beneficiary for any loss occasioned thereby.

Where a trustee is directed to sell trust-property, or to invest trust-money in the purchase of property, he may exercise a reasonable discretion as to the time of effecting the sale or purchase.

Illustrations.

(a) A bequeaths property to B, directing him to sell it with all convenient speed, and pay the proceeds to C: This does not render an immediate sale imperative.

(b) A bequeaths property to B, directing him to sell it at such time and in such manner as he shall think fit, and invest the proceeds for the benefit of C: This does not authorize B, as between him and C, to postpone the sale to an indefinite period.

39 For the purpose of completing any such sale, the trustee shall have power to convey or otherwise dispose of the property sold in such manner as may be necessary.

40. A trustee may, at his discretion, call in any trust-property invested in any security, and invest the same on any of the securities mentioned or referred to in section 20, and from time to time vary any such investments for others of the same nature:

Provided that, where there is a person competent to contract, and entitled at the time to receive the income of the trust-property for his life, or for any greater estate, no such change of investment shall be made without his consent in writing.

41. Where any property is held by a trustee in trust for a minor, such trustee may, at his discretion, pay to the guardians (if any) of such minor, or otherwise apply, for or towards his maintenance or education or advancement in life, or the reasonable expenses of his religious worship, marriage, or funeral, the whole or any part of the income to which he may be entitled in respect of such property; and such trustee shall accumulate all the residus of such income by way of compound interest, by investing the same and the resulting income thereof from time to time in any of the securities mentioned or referred to in section 20, for the benefit of the person who shall ultimately become entitled to the property from which such accumulations have arisen:

But no such power shall be exercised unless and until—

(1) notice in writing requiring payment of the principal money has been served on the mortgagor, or on one of several mortgagors, and default has been made in payment of the principal money, or of part thereof, for three months after such service; or

(2) some interest under the mortgage, amounting at least to five hundred rupees, is in arrear, and unpaid for three months after becoming due.

When a sale has been made in professed exercise of such a power, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorize the sale, or that due notice was not given, or that the power was otherwise improperly or irregularly exercised; but any person damaged by an unauthorized or improper or irregular exercise of the power, shall have his remedy in damages against the person exercising the power.

The money which is received by the mortgagee arising from the sale after discharge of prior incumbrances (if any) to which the sale is not made subject, or after payment into Court, under section 57, of a sum to meet any prior incumbrance, shall, in the absence of a contract to the contrary, be held by him in trust to be applied by him, first in payment of all costs, charges, and expenses properly incurred by him as incident to the sale or any attempted sale; and, secondly, in discharge of the mortgage-money and costs and other money (if any) due under the mortgage; and the residue of the money so received shall be paid to the person entitled to the mortgaged property, or authorized to give receipts for the proceeds of the sale thereof.

Nothing in the former part of this section applies to powers conferred before this Act comes into force.

The powers and provisions contained in section 6 to 19 (both inclusive) of the Trustees' and Mortgagees' Powers Act, 1866,* shall be deemed to apply to English mortgages wherever in British India the mortgaged property may be situate, when neither the mortgagor nor the mortgagee is a Hindu, Muhammadan, or Buddhist, "or a member of any other race, sect, tribe, or class from time to time specified in this behalf by the Local Government, with the previous sanction of the Governor-General in Council, in the local official Gazette."†

* Act XXVIII. of 1866.

† The words quoted above in the last paragraph of s. 69 have been inserted by the Transfer of Property, Act (1882) Amendment Act (III. of 1885), s. 5.

This section applies only if and as far as a contrary intention is not expressed in the instrument of trust (if any), and shall have effect subject to the terms of that instrument, and to the provisions therein contained.

This section applies only to trusts created after this Act comes into force.

44. When an authority to deal with the trust-property is given to several trustees, and one of them of whom one disclaims or dies, the authority may be exercised by the continuing trustees, unless, from the terms of the instrument of trust, it is apparent that the authority is to be exercised by a number in excess of the number of the remaining trustees.

45. Where a decree has been made in a suit for the execution of a trust, the trustee must not exercise any of his powers except in conformity with such decree, or with the sanction of the Court by which the decree has been made, or, where an appeal against the decree is pending, of the Appellate Court.

CHAPTER V.

OF THE DISABILITIES OF TRUSTEES.

46. A trustee who has accepted the trust cannot afterwards renounce it except (a) with the permission of a principal Civil Court of original jurisdiction, or (b), if the beneficiary is competent to contract, with his consent, or (c) by virtue of special power in the instrument of trust.

47. A trustee cannot delegate his office or any of his duties, either to a co-trustee or to a stranger, unless (a) the instrument of trust so provides, or (b) the delegation is in the regular course of business, or (c) the delegation is necessary, or (d) the beneficiary, being competent to contract, consents to the delegation.

Explanation.—The appointment of an attorney or proxy to do an act merely ministerial, and involving no independent discretion, is not a delegation within the meaning of this section.

same rate. But the amount of such insurance shall not exceed the amount specified in this behalf in the mortgage-deed, or (if no such amount is therein specified) two-thirds of the amount that would be required, in case of total destruction, to reinstate the property insured.

Nothing in this section shall be deemed to authorize the mortgagee to insure when an insurance of the property is kept up by or on behalf of the mortgagor to the amount in which the mortgagee is hereby authorized to insure.

73. Where mortgaged property is sold through failure to pay Charge on proceeds of re- arrears of revenue or rent due in respect venue-sale. thereof, the mortgagee has a charge on the surplus (if any) of the proceeds, after payment thereof of the said arrears, for the amount remaining due on the mortgage, unless the sale has been occasioned by some default on his part.

74. Any second or other subsequent mortgagee may, at any Right of subsequent mort- time after the amount due on the next gagee to pay off prior mort- prior mortgage has become payable, gagee. tender such amount to the next prior mortgagee, and such mortgagee is bound to accept such tender, and to give a receipt for such amount; and (subject to the provisions of the law* for the time being in force regulating the registration of documents) the subsequent mortgagee shall, on obtaining such receipt, acquire, in respect of the property, all the rights and powers of the mortgagee as such, to whom he has made such tender.

75. Every second or other subsequent mortgagee has, so far Rights of mesne mort- as regards redemption, foreclosure, and gagee against prior and sale of the mortgaged property, the subsequent mortgagees. same rights against the prior mortgagee or mortgagees as his mortgagor has against such prior mortgagee or mortgagees, and the same rights against the subsequent mortgagees (if any) as he has against his mortgagor.

76. When, during the continuance of the mortgage, the Liabilities of mortgagee mortgages takes possession of the mort- in possession. gaged property—

(a) he must manage the property as a person of ordinary prudence would manage it if it were his own;

* See the Indian Registration Act (III. of 1877).

or lessee of the trust-property or any part thereof; and such permission shall not be given unless the proposed purchase, mortgage, or lease is manifestly for the advantage of the beneficiary.

And no trustee, whose duty it is to buy or to obtain a mortgage or lease of particular property for the beneficiary, may buy it or any part thereof, or obtain a mortgage or lease of it or any part thereof, for himself.

54. A trustee or co-trustee whose duty it is to invest trust-property, must not invest it on a mortgage or personal security, must not invest it on a mortgage by, or on the personal security of, himself or one of his co-trustees.

CHAPTER VI.

OF THE RIGHTS AND LIABILITIES OF THE BENEFICIARY.

55. The beneficiary has, subject to the provisions of the instrument of trust, a right to the rents and profits of the trust-property.

56. The beneficiary is entitled to have the intention of the author of the trust specifically executed to the extent of the beneficiary's interest;

and, where there is only one beneficiary, and he is competent to contract, or where there are several beneficiaries, and they are competent to contract, and all of one mind, he or they may require the trustee to transfer the trust-property to him or them, or to such person as he or they may direct.

When property has been transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in the second clause of this section applies to such property during her marriage.

Illustrations.

(a.) Certain Government securities are given to trustees upon trust to accumulate the interest until A attains the age of 24, and then to transfer the gross amount to him: A, on attaining majority, may, as the person exclusively interested in the trust-property, require the trustees to transfer it immediately to him.

(2) when the mortgagor tenders or deposits, in manner hereinafter provided, the amount for the time being due on the mortgage, the mortgagee must, notwithstanding the provisions in the other clauses of this section, account for his gross receipts from the mortgaged property from the date of the tender, or from the earliest time when he could take such amount out of Court, as the case may be.

If the mortgagee fail to perform any of the duties imposed upon him by this section, he may, Loss occasioned by his default. when accounts are taken in pursuance of a decree made under this chapter, be debited with the loss (if any) occasioned by such failure.

77. Nothing in section 76, clauses (b), (d), (g), and (h), Receipts in lieu of interest. applies to cases where there is a contract between the mortgagee and the mortgagor that the receipts from the mortgaged property shall, so long as the mortgagee is in possession of the property, be taken in lieu of interest on the principal money, or in lieu of such interest and defined portions of the principal.

Priority.

78. Where, through the fraud, misrepresentation, or gross neglect of a prior mortgagee, another mortgagee, Postponement of prior mortgagee. person has been induced to advance money on the security of the mortgaged property, the prior mortgagee shall be postponed to the subsequent mortgagee.

79. If a mortgage, made to secure future advances, the performance of an engagement, or the Mortgage to secure uncertain amount when maximum is expressed. balance of a running account, expresses the maximum to be secured thereby, a subsequent mortgage of the same property shall, if made with notice of the prior mortgage, be postponed to the prior mortgage in respect of all advances or debits not exceeding the maximum, though made or allowed with notice of the subsequent mortgage.

Illustration.

A mortgages Sultanpur to his bankers, B & Co, to secure the balance of his account with them to the extent of Rs. 10,000. A then mortgages Sultanpur to C, to secure Rs. 10,000, C having notice of the mortgage to B & Co., and C gives notice to B & Co. of the second mortgage. At the

Explanation II.—When the administration of the trust involves the receipt and custody of money, the number of trustees should be two at least.

Illustrations.

(a) A, one of several beneficiaries, proves that B, the trustee, has improperly disposed of part of the trust-property, or that the property is in danger from B's being in insolvent circumstances, or that he is incapacitated from acting as trustee: A may obtain a receiver of the trust-property.

(b.) A bequeaths certain jewels to B in trust for C. B dies during A's lifetime, then A dies: C is entitled to have the property conveyed to a trustee for him.

(c) A conveys certain property to four trustees in trust for B. Three of the trustees die. B may institute a suit to have three new trustees appointed in the place of the deceased trustees.

(d) A conveys certain property to three trustees in trust for B. All the trustees disclaim. B may institute a suit to have three trustees appointed in place of the trustees so disclaiming.

(e) A, a trustee for B, refuses to act, or goes to reside permanently out of British India, or is declared an insolvent, or compounds with his creditors, or suffers a co-trustee to commit a breach of trust: B may institute a suit to have A removed, and a new trustee appointed in his room.

61. The beneficiary has a right that his trustee shall be Right to compel to any compelled to perform any particular act of duty. act of his duty as such, and restrained from committing any contemplated or probable breach of trust.

Illustrations.

(a) A contracts with B to pay him monthly Rs. 100 for the benefit of C. B writes and signs a letter declaring that he will hold in trust for C the money so to be paid. A fails to pay the money in accordance with his contract. C may compel B on a proper indemnity to allow C to sue on the contract in B's name.

(b) A is trustee of certain land, with a power to sell the same, and pay the proceeds to B and C equally. A is about to make an improvident sale of the land: B may sue on behalf of himself and C for an injunction to restrain A from making the sale.

62. Where a trustee has wrongfully bought trust-property, Wrongful purchase by the beneficiary has a right to have the trustee. property declared subject to the trust, or re-transferred by the trustee, if it remains in his hands unsold, or if it has been bought from him by any person with notice of the trust, by such person. But in such case the beneficiary must repay the purchase-money paid by the trustee, with interest and such

Deposit in Court.

83. At any time after the principal money has become payable, and before a suit for redemption of the mortgaged property is barred, the mortgagor, or any other person entitled to institute such suit, may deposit, in any Court in which he might have instituted such suit, to the account of the mortgagee, the amount remaining due on the mortgage.

The Court shall thereupon cause written notice of the deposit to be served on the mortgagee, and the mortgagee may, on presenting a petition (verified in manner prescribed by law* for the verification of claims) stating the amount then due on the mortgage, and his willingness to accept the money so deposited in full discharge of such amount, and on depositing in the same Court the mortgage-deed if then in his possession or power, apply for and receive the money, and the mortgage-deed so deposited shall be delivered to the mortgagor or such other person as aforesaid.

84. When the mortgagor or such other person as aforesaid has tendered or deposited in Court under section 83 the amount remaining due on the mortgage, interest on the principal money shall cease from the date of the tender, or as soon as the mortgagor or such other person as aforesaid has done all that has to be done by him to enable the mortgagee to take such amount out of Court, as the case may be.

Nothing in this section, or in section 83, shall be deemed to deprive the mortgagee of his right to interest when there exists a contract that he shall be entitled to reasonable notice before payment or tender of the mortgage-money.

85 to 90.—[*Repealed by Act V. of 1908.*]

Redemption.

91. Besides the mortgagor, any of the following persons may redeem, or institute a suit for redemption of, the mortgaged property:—

Who may sue for redemption.

* See the Code of Civil Procedure (Act XIV. of 1882), ss. 51 and 52.

(a) a transferee in good faith for consideration without having notice of the trust, either when the purchase-money was paid, or when the conveyance was executed, or—

(b) a transferee for consideration from such a transferee.

A judgment-creditor of the trustee attaching and purchasing trust-property is not a transferee for consideration within the meaning of this section.

Nothing in section 63 applies to money, currency-notes, and negotiable instruments in the hands of a *bonâ-fide* holder to whom they have passed in circulation, or shall be deemed to affect the Indian Contract Act, 1872,* section 108, or the liability of a person to whom a debt or charge is transferred.

65. Where a trustee wrongfully sells or otherwise transfers trust-property, and afterwards himself becomes the owner of the property, the property again becomes subject to the trust, notwithstanding any want of notice on the part of intervening transferees in good faith for consideration.

66. Where the trustee wrongfully mingles the trust-property with his own, the beneficiary is entitled to a charge on the whole fund for the amount due to him.

67. If a partner, being a trustee, wrongfully employs trust-property in the business or on the account of the partnership, no other partner is liable therefor in his personal capacity to the beneficiaries unless he had notice of the breach of trust.

The partners having such notice are jointly and severally liable for the breach of trust.

Illustrations.

(a) A and B are partners. A dies, having bequeathed all his property to B in trust for Z, and appointed B his sole executor. B, instead of winding up the affairs of the partnership, retains all the assets in the business. Z may compel him, as partner, to account for so much of the profits as are derived from A's share of the capital. B is also answerable to Z for the improper employment of A's assets

(b) A, a trader, bequeaths his property to B in trust for C, appoints B his sole executor, and dies. B enters into partnership with X and Y in the same trade, and employs A's assets in the partnership-business. B

* Act IX of 1872.

Charges.

100. Where immoveable property of one person is, by act of parties or operation of law, made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property; and all the provisions hereinbefore contained as to a mortgagor shall, so far as may be, apply to the owner of such property, and the provisions of sections 81 and 82* shall, so far as may be, apply to the person having such charge.

Nothing in this section applies to the charge of a trustee on the trust-property for expenses properly incurred in the execution of his trust.

101. Where the owner of a charge or other incumbrance on immoveable property is or becomes absolutely entitled to that property, the charge or incumbrance shall be extinguished unless he declares, by express words or necessary implication, that it shall continue to subsist, or such continuance would be for his benefit.

Notice and Tender.

102. Where the person on or to whom any notice or tender is to be served or made under this Chapter does not reside in the district in which the mortgaged property or some part thereof is situate, service or tender on or to an agent holding a general power-of-attorney from such person, or otherwise duly authorized to accept such service or tender, shall be deemed sufficient.

Where the person or agent on whom such notice should be served cannot be found in the said district, or is unknown to the person required to serve the notice, the latter person may apply to any Court in which a suit might be brought for redemption of the mortgaged property, and such Court shall direct in what manner such notice shall be served, and any notice served in compliance with such direction shall be deemed sufficient.

Where the person or agent to whom such tender should be made cannot be found within the said district, or is unknown to the person desiring to make the tender, the latter person may

* Here certain words, repealed by Act V. of 1908, have been omitted.

(c) by such means as may be prescribed by the instrument of trust ;

(d) by appointment under this Act of a new trustee in his place ;

(e) by consent of himself and the beneficiary, or, where there are more beneficiaries than one, all the beneficiaries being competent to contract, or

(f) by the Court to which a petition for his discharge is presented under this Act.

72. Notwithstanding the provisions of section 11, every trustee

Petition to be discharged may apply by petition to a principal Civil Court of original jurisdiction to be discharged from his office ; and, if the Court finds that there is sufficient reason for such discharge, it may discharge him accordingly, and direct his costs to be paid out of the trust-property. But, where there is no such reason, the Court shall not discharge him, unless a proper person can be found to take his place.

73. Whenever any person appointed a trustee disclaims, or any trustee, either original or substituted, dies, or is, for a continuous period of six months, absent from British India, or leaves British India for the purpose of residing abroad, or is declared an insolvent, or desires to be discharged from the trust, or refuses or becomes, in the opinion of a principal Civil Court of original jurisdiction, unfit or personally incapable to act in the trust, or accepts an inconsistent trust, a new trustee may be appointed in his place by—

Appointment of new trustee on death, &c. any trustee, either original or substituted, dies, or is, for a continuous period of six months, absent from British India, or leaves British India for the purpose of residing abroad, or is declared an insolvent, or desires to be discharged from the trust, or refuses or becomes, in the opinion of a principal Civil Court of original jurisdiction, unfit or personally incapable to act in the trust, or accepts an inconsistent trust, a new trustee may be appointed in his place by—

(a) the person nominated for that purpose by the instrument of trust (if any), or

(b) if there be no such person, or no such person able and willing to act, the author of the trust, if he be alive and competent to contract, or the surviving or continuing trustees or trustee for the time being, or legal representative of the last surviving and continuing trustee, or (with the consent of the Court) the retiring trustees, if they all retire simultaneously, or (with the like consent) the last retiring trustee.

Every such appointment shall be by writing under the hand of the person making it.

On an appointment of a new trustee, the number of trustees may be increased.

periodically or on specified occasions, to the transferor by the transferee who accepts the transfer on such terms.

The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service, or other thing to be so rendered, is called the rent.

"Lessor," "lessee,"
"premium," and "rent"
defined.

106. In the absence of a contract or local law or usage to the contrary, a lease of immoveable property, for agricultural or manufacturing purposes, shall be deemed to be a lease from year to year terminable, on the part of either lessor or lessee, by six months' notice expiring with the end of a year of the tenancy; and a lease of immoveable property for any other purpose shall be deemed to be a lease from month to month terminable, on the part of either lessor or lessee, by fifteen days' notice expiring with the end of a month of the tenancy.

Every notice under this section must be in writing, signed by or on behalf of the person giving it, and tendered or delivered either personally to the party who is intended to be bound by it, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.

107.* A lease of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by registered instrument.

Leases how made.

"All other leases of immoveable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession:

Provided that the Local Government may, with the previous sanction of the Governor-General in Council, from time to time, by notification in the local official Gazette, direct that leases of immoveable property, other than leases from year to year, or for any term exceeding one year, or reserving a yearly rent, or any

* S. 107 extends to every cantonment in British India.—See the Cantonments Act (XIII. of 1889), s. 32 (1). S. 107 shall not extend or be extended to any district or tract of country for the time being excluded from the operation of the Indian Registration Act (III. of 1877) under the power conferred by the first section of that Act or otherwise.—See s. 1, *supra*.

CHAPTER VIII.

OF THE EXTINCTION OF TRUSTS.

Trust how extinguished. **77.** A trust is extinguished—

- (a) when its purpose is completely fulfilled ; or
- (b) when its purpose becomes unlawful ; or
- (c) when the fulfilment of its purpose becomes impossible by destruction of the trust-property or otherwise ; or
- (d) when the trust, being revocable, is expressly revoked.

Revocation of trust. **78** A trust created by will may be revoked at the pleasure of the testator.

A trust otherwise created can be revoked only,—

- (a) where all the beneficiaries are competent to contract—by their consent ;
- (b) where the trust has been declared by a non-testamentary instrument or by word of mouth—in exercise of a power of revocation expressly reserved to the author of the trust ; or,
- (c) where the trust is for the payment of the debts of the author of the trust, and has not been communicated to the creditors—at the pleasure of the author of the trust.

Illustration.

A conveys property to B in trust to sell the same, and pay out of the proceeds the claims of A's creditors. A reserves no power of revocation. If no communication has been made to the creditors, A may revoke the trust : but, if the creditors are parties to the arrangement, the trust cannot be revoked without their consent.

79. No trust can be revoked by the author of the trust so as to defeat or prejudice what the trustees may have duly done in execution of the trust.

CHAPTER IX.

OF CERTAIN OBLIGATIONS IN THE NATURE OF TRUSTS.

Where obligation in nature of trust is created.

80. An obligation in the nature of a trust is created in the following cases :—

Provided that, if the injury be occasioned by the wrongful act or default of the lessee, he shall not be entitled to avail himself of the benefit of this provision:

(f) if the lessor neglects to make, within a reasonable time after notice, any repairs which he is bound to make to the property, the lessee may make the same himself, and deduct the expense of such repairs with interest from the rent, or otherwise recover it from the lessor:

(g) if the lessor neglects to make any payment which he is bound to make, and which, if not made by him, is recoverable from the lessee or against the property, the lessee may make such payment himself, and deduct it with interest from the rent, or otherwise recover it from the lessor:

(h) the lessee may remove, at any time during the continuance of the lease, all things which he has attached to the earth; provided he leaves the property in the state in which he received it.

(i) when a lease of uncertain duration determines by any means except the fault of the lessee, he or his legal representative is entitled to all the crops planted or sown by the lessee, and growing upon the property when the lease determines, and to free ingress and egress to gather and carry them:

(j) the lessee may transfer absolutely, or by way of mortgage or sub-lease, the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it. The lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease.

Nothing in this clause shall be deemed to authorize a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer, or lessee:

(k) the lessee is bound to disclose to the lessor any fact as to the nature or extent of the interest which the lessee is about to take, of which the lessee is, and the lessor is not, aware, and which materially increases the value of such interest:

(l) the lessee is bound to pay or tender, at the proper time and place, the premium or rent to the lessor or his agent in this behalf:

Illustrations.

(a) A conveys certain land to B—

“upon trust,” and no trust is declared; or

“upon trust to be thereafter declared,” and no such declaration is ever made; or

upon trusts that are too vague to be executed, or

upon trusts that become incapable of taking effect; or

“in trust for C,” and C renounces his interest under the trust:

In each of these cases B holds the land for the benefit of A

(b) A transfers Rs 10,000 in the four per cents to B in trust to pay the interest annually accruing due to C for her life. A dies. Then C dies. B holds the fund for the benefit of A's legal representative.

(c) A conveys land to B upon trust to sell it, and apply one moiety of the proceeds for certain charitable purposes, and the other for the maintenance of the worship of an idol. B sells the land, but the charitable purposes wholly fail, and the maintenance of the worship does not exhaust the second moiety of the proceeds; B holds the first moiety and the part unapplied of the second moiety for the benefit of A or his legal representative.

(d) A bequeaths Rs 10,000 to B, to be laid out in buying land to be conveyed for purposes which, either wholly or partially, fail to take effect: B holds for the benefit of A's legal representative the undisposed-of interest in the money, or land if purchased.

84. Where the owner of property transfers it to another for

Transfer for illegal purpose. an illegal purpose, and such purpose is not carried into execution, or the transferor is not as guilty as the transferee, or the effect of permitting the transferee to retain the property might be to defeat the provisions of any law, the transferee must hold the property for the benefit of the transferor.

85. Where a testator bequeaths certain property upon trust,

Bequest for illegal purpose. and the purpose of the trust appears on the face of the will to be unlawful, or, during the testator's lifetime, the legatee agrees with him to apply the property for an unlawful purpose, the legatee must hold the property for the benefit of the testator's legal representative.

Where property is bequeathed, and the revocation of the bequest is prevented by coercion, the legatee must hold the property for the benefit of the testator's legal representative.

The lessor, the transferee, and the lessee may determine what proportion of the premium or rent reserved by the lease is payable in respect of the part so transferred, and, in case they disagree, such determination may be made by any Court having jurisdiction to entertain a suit for the possession of the property leased.

110. Where the time limited by a lease of immoveable property is expressed as commencing from a particular day, in computing that time such day shall be excluded. Where no day of commencement is named, the time so limited begins from the making of the lease.

Where the time so limited is a year, or a number of years, in the absence of an express agreement to the contrary, the lease shall last during the whole anniversary of the day from which such time commences.

Where the time so limited is expressed to be terminable before its expiration, and the lease omits to mention at whose option it is so terminable, the lessee, and not the lessor, shall have such option.

111. A lease of immoveable property determines—

Determination of lease.

(a) by efflux of the time limited thereby :

(b) where such time is limited conditionally on the happening of some event—by the happening of such event :

(c) where the interest of the lessor in the property terminates on, or his power to dispose of the same extends only to, the happening of any event—by the happening of such event :

(d) in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right :

(e) by express surrender ; that is to say, in case the lessee yields up his interest under the lease to the lessor by mutual agreement between them :

(f) by implied surrender :

(g) by forfeiture, that is to say—(1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter, or the lease shall become void ; or (2) in case the lessee renounces his character as such by setting up a title in

(h) A, a guardian, buys up for himself incumbrances on his ward B's estate at an undervalue. A holds for the benefit of B the incumbrances so bought, and can only charge him with what he has actually paid.

89. Where, by the exercise of undue influence, any advantage is gained in derogation of the interests of another, the person gaining such advantage without consideration, or with notice that such influence has been exercised, must hold the advantage for the benefit of the person whose interests have been so prejudiced.

90. Where a tenant for life, co-owner, mortgagee, or other qualified owner of any property, by availing himself of his position as such, gains an advantage in derogation of the rights of the other persons interested in the property, or where any such owner, as representing all persons interested in such property, gains any advantage, he must hold, for the benefit of all persons so interested, the advantage so gained, but subject to repayment by such persons of their due share of the expenses properly incurred, and to an indemnity by the same persons against liabilities properly contracted, in gaining such advantage.

Illustrations.

(a) A, the tenant for life of leasehold property, renews the lease in his own name, and for his own benefit: A holds the renewed lease for the benefit of all those interested in the old lease.

(b) A village belongs to a Hindu family. A one of its members pays nazrana to Government, and thereby procures his name to be entered as the inamdar of the village. A holds the village for the benefit of himself and the other members.

(c) A mortgages land to B who enters into possession. B allows the Government revenue to fall into arrear with a view to the land being put up for sale, and his becoming himself the purchaser of it. The land is accordingly sold to B: Subject to the repayment of the amount due on the mortgage, and of his expenses properly incurred as mortgagee, B holds the land for the benefit of A.

91. Where a person acquires property with notice that another person has entered into an existing contract affecting that property, of which specific performance could be enforced, the former must hold the property for the benefit of the latter to the extent necessary to give effect to the contract.

of the suit, or gives such security as the Court thinks sufficient for making such payment within fifteen days, the Court may, in lieu of making a decree for ejectment, pass an order relieving the lessee against the forfeiture, and thereupon the lessee shall hold the property leased as if the forfeiture had not occurred.

115. The surrender, express or implied, of a lease of im-
 Effect of surrender and moveable property does not prejudice
 forfeiture on under-leases. an under-lease of the property or any
 part thereof previously granted by the lessee, on terms and con-
 ditions substantially the same (except as regards the amount of
 rent) as those of the original lease; but, unless the surrender is
 made for the purpose of obtaining a new lease, the rent payable by,
 and the contracts binding on, the under-lessee shall be respectively
 payable to, and enforceable by, the lessor.

The forfeiture of such a lease annuls all such under-leases,
 except where such forfeiture has been procured by the lessor in
 fraud of the under-lessees, or relief against the forfeiture is granted
 under section 114.

116. If a lessee or under-lessee of property remains in
 possession thereof after the determination
 Effect of holding over. of the lease granted to the lessee, and
 the lessor or his legal representative accepts rent from the lessee or
 under-lessee, or otherwise assents to his continuing in possession,
 the lease is, in the absence of an agreement to the contrary, renewed
 from year to year, or from month to month, according to the
 purpose for which the property is leased, as specified in section
 106.

Illustrations.

(a.) A lets a house to B for five years. B underlets the house to C at a
 monthly rent of Rs 100. The five years expire, but C continues in posses-
 sion of the house, and pays the rent to A. C's lease is renewed from month
 to month.

(b.) A lets a farm to B for the life of C. C dies, but B continues in
 possession with A's assent. B's lease is renewed from year to year.

117. None of the provisions of this chapter apply to leases
 Exemption of leases for for agricultural purposes, except in so
 agricultural purposes. far as the Local Government, with the
 previous sanction of the Governor-General in Council, may, by
 notification published in the local official Gazette, declare all or
 any of such provisions to be so applicable "in the case of all or

contract with the person for whose benefit he holds it, or with any one through whom such person claims, he may, without the permission of the Court, buy, or become lessee or mortgagee of, the property or any part thereof.

96. Nothing contained in this chapter shall impair the rights of transferees in good faith for consideration, or create an obligation in evasion of any law for the time being in force.

THE SCHEDULE:
REPEAL OF ENACTMENTS.
(See section 2.)
STATUTE.

Year and chapter.	Short title.	Extent of repeal.
29 Car II., c 3	The Statute of Frauds	Sections 7, 8, 9, 10, and 11.

ACTS OF THE GOVERNOR-GENERAL IN COUNCIL.

Number and year.	Short title.	Extent of repeal.
XXVIII. of 1866	The Trustees' and Mortgagees' Powers Act, 1866	Sections 2, 3, 4, 5, 32, 33, 34, 35, 36, and 37. In sections 39* and 43, the word "trustee," wherever it occurs, and in section 43 the words, "management or" and "the trust-property or."
I of 1877	The Specific Relief Act, 1877.	In section 12, the first illustration.

* In the schedule, the figures 39 have been repealed by Act XII. of 1891, Sch. I., but the two words between which the figures 39 stand are allowed to stand as they are.

129. Nothing in this chapter relates to gifts of moveable property made in contemplation of death, or shall be deemed to affect any rule of Muhammadan Law, or, save as provided by section 123, any rule of Hindu or Buddhist Law.

CHAPTER VIII.*

OF TRANSFERS OF ACTIONABLE CLAIMS.

130. (1) The transfer of an actionable claim shall be effected only by the execution of an instrument in writing signed by the transferor or his duly-authorized agent, and shall be complete and effectual upon the execution of such instrument, and thereupon all the rights and remedies of the transferor, whether by way of damages or otherwise, shall vest in the transferee, whether such notice of the transfer as is hereinafter provided be given or not :

Provided that every dealing with the debt or other actionable claim by the debtor or other person, from or against whom the transferor would, but for such instrument of transfer as aforesaid, have been entitled to recover or enforce such debt or other actionable claim, shall (save where the debtor or other person is a party to the transfer, or has received express notice thereof as hereinafter provided) be valid as against such transfer.

(2) The transferee of an actionable claim may, upon the execution of such instrument of transfer as aforesaid, sue or institute proceedings for the same in his own name without obtaining the transferor's consent to such suit or proceedings, and without making him a party thereto.

Exception—Nothing in this section applies to the transfer of a marine or fire policy of insurance.

Illustrations.

(1) A owes money to B, who transfers the debt to C. B then demands the debt from A, who, not having received notice of the transfer as prescribed in section 131, pays B. The payment is valid, and C cannot sue A for the debt.

* Ch. VIII. has been substituted for the original chapter by the Transfer of Property Act (II. of 1900), s. 4.

ACT XXVIII. OF 1855

(The Usury Laws Repeal Act, 1855).*

RECEIVED THE G.-G.'S ASSENT ON THE 19TH
SEPTEMBER 1855.

An Act for the Repeal of the Usury Laws.

WHEREAS it is expedient to repeal the laws now in force relating to Usury; It is enacted as follows:—

Preamble.

1. [*Repeal of enactments.*] *Repealed by the Repealing Act (XIV. of 1870).*

2. In any suit in which interest is recoverable, the amount Rate of interest to be shall be adjudged or decreed by the decreed by Courts Court at the rate (if any) agreed upon by the parties; and, if no rate shall have been agreed upon, at such rate as the Court shall deem reasonable.

3. Whenever a Court shall direct that a judgment or decree Rate of interest upon a shall bear interest, or shall award in judgment or decree. terest upon a judgment or decree, it may order the interest to be calculated at the rate allowed in the

* This short title has been given by the Indian Short Titles Act (XIV. of 1897)

This Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act (XV of 1874), s 3

It has been declared, by notification under s 3 (a) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts, namely:—

(1) Sindh.—*See Gazette of India*, 1880, Pt. I, p. 672 :

(2) West Jalpaiguri, the Western Dvars, the Western Hills of Dgrjuling, the Darjuling Tarai, and the Damson Sub-division of the Darjuling District.—*See Gazette of India*, 1881, Pt. I., p. 74 :

(3) The District of Hazaribagh.—*See Gazette of India*, 1881, Pt. I., p. 507 :

absolutely vested at the date of the assignment, shall have transferred and vested in him all rights of suit as if the contract contained in the policy had been made with himself.

136. No Judge, legal practitioner, or officer connected with any Court of Justice shall buy, or traffic in or stipulate for, or agree to receive any share of, or interest in, any actionable claim, and no Court of Justice shall enforce, at his instance, or at the instance of any person claiming by or through him, any actionable claim so dealt with by him as aforesaid.

137. Nothing in the foregoing sections of this chapter applies to stocks, shares, or debentures, or to instruments which are for the time being, by law or custom, negotiable, or to any mercantile document of title to goods.

Explanation.—The expression, "mercantile document of title to goods," includes a bill-of-lading, dock-warrant, warehouse-keeper's certificate, railway-receipt, warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorizing, or purporting to authorize, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented.

THE SCHEDULE.

REPEAL OF ACTS.

(See section 2.)

(a.) STATUTES.

Year and Chapter	Subject	Extent of repeal
27 Hen VIII., c 10	Uses . . .	The whole.
13 Eliz., c 5 . . .	Fraudulent conveyances	The whole.
27 Eliz., c 4 . . .	Fraudulent conveyances	The whole
4 Wm. & Mary, c. 16	Clandestine mortgages	The whole

vided that, in the latter case, the amount deposited shall be subject to the decision of the Court as to the rate at which interest shall be calculated.

6. In any case in which an adjustment of accounts may be necessary between the lender and the borrower of money upon any mortgage, conditional sale of landed property, or other contract whatsoever, which may be entered into after the passing of this Act, interest shall be calculated at the rate stipulated therein; or, if no rate of interest shall have been stipulated, and interest be payable under the terms of the contract, at such rate as the Court shall deem reasonable.

7. [*Saving of prior transactions.*] *Repealed by the Repealing Act (XIV. of 1870).*

8. [*Commencement of Act.*] *Repealed by the Repealing Act (XIV. of 1870).*

SCHEDULE OF REPEALED ENACTMENTS.

[*Repealed by the Repealing Act (XIV. of 1870).*]

ACT XV. OF 1895:

The Crown Grants Act, 1895.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

Received the G.-G.'s Assent on the 10th October 1895.

An Act to explain the Transfer of Property Act, 1882, so far as relates to grants from the Crown, and to remove certain doubts as to the powers of the Crown in relation to such grants.

WHEREAS doubts have arisen as to the extent and operation of the Transfer of Property Act, 1882, and as to the power of the Crown to impose limitations and restrictions upon grants and other transfers of land made by it or under its authority, and it is expedient to remove such doubts; It is hereby enacted as follows:—

Title, extent, and commencement.

1. (1) This Act may be called the Crown Grants Act, 1895;

(2) it extends to the whole of British India; and

(3) it shall come into force at once.

2. Nothing in the Transfer of Property Act, 1882, contained shall apply, or be deemed ever to have applied, to any grant or other transfer of land or of any interest therein heretofore made or hereafter to be made by or on behalf of Her Majesty the Queen-Empress, her heirs, or successors, or by or on behalf of the Secretary of State for India in Council, to, or in favour of, any person whomsoever; but every such grant and transfer shall be construed and take effect as if the said Act had not been passed.

3. All provisions, restrictions, conditions, and limitations over Crown grants to take effect according to their tenor. contained in any such grant or transfer as aforesaid shall be valid, and take effect according to their tenor, any rule of law, Statute, or enactment of the Legislature to the contrary notwithstanding.]

ACT XXIII. OF 1863

[The Waste Lands (Claims) Act, 1863].*

RECEIVED THE G.-G.'s ASSENT ON THE 10TH MARCH 1863.

An Act to provide for the Adjudication of Claims to Waste Lands.

WHEREAS it is expedient to make special provision for the speedy adjudication of claims which may be preferred to waste lands proposed to be sold or otherwise dealt with on account of Government, and of objections taken to the sale or other disposition of such lands; It is enacted as follows:—

* This is the short title given to the Act by the Indian Short Titles Act (XIV of 1897).

For Proceedings relating to the Bill, see *Calcutta Gazette*, 1863, Supplement, p. 109

Act XXIII of 1863 has been declared to be in force in—

(1) the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874):

(2) the Arakan Hill Districts, by the Arakan Hill Districts Laws Regulation (IX of 1874).

It has further been declared, by notification under s. 3 (a) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

(1) West Jalpaiguri (see *Gazette of India*, Mar. 5, 1881, Pt. I., p. 11):

(2) The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singhbhum (see *Gazette of India*, 1881, Pt. I., p. 504):

(3) The Porabhat Estate in the Singhbhum District (see *Gazette of India*, 1807, Pt. I., p. 1059):

(4) Kumaon and Garhwal (see *Gazette of India*, 1876, Pt. I., p. 605):

(5) The scheduled portion of the Murzapur District (see *Gazette of India*, 1897, Pt. I., p. 383):

(6) Jaunsar Bawar (see *Gazette of India*, 1879, Pt. I., p. 382):

(7) The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, and Dera Ghazi Khan (see *Gazette of India*, 1836, Pt. I., p. 43):

(8) The District of Lahaul (see *Gazette of India*, 1836, Pt. I., p. 301):

(9) The District of Silhat (see *Gazette of India*, 1879, Pt. I., p. 631):

2 000—14-10-1909.

Act XXIII., 1863—1.

the claimant or objector to contest the order of rejection in the manner hereinafter provided.

4. If the Collector or other officer as aforesaid shall consider the claim or objection to be established, and that the sale or other disposition of the land should not take place, he shall stop the sale or other disposition of the land ;

but such sale or other disposition of the land may afterwards be proceeded with if, on an order issued by the Local Government to try the claim or objection as provided in section 6 of this Act, the claimant or objector shall fail to establish the same.

5. If the Collector or other officer as aforesaid shall order that the claim or objection be rejected, or that the land be sold subject to any condition or reservation, or that it be otherwise dealt with, he shall cause a copy of such order to be delivered to the claimant or objector ;

and, if such claimant or objector shall not, within one week from the delivery of such copy, or within such further time as the Collector or other officer as aforesaid, for any special reason to be recorded, shall see fit to grant, give notice in writing to such Collector or other officer as aforesaid that he intends to contest such order, the order shall be final.

If the claimant or objector shall, within the time allowed, give such notice, the Collector or other officer as aforesaid shall immediately make a report to the Board of Revenue or other superior revenue-authority, and shall forward with such report a copy of his order, stating fully all the circumstances of the case, and the evidence adduced in support or otherwise of the claim or objection ;

and such Board or other authority, on the receipt of such report, and after calling for any further information which it may consider necessary, may confirm, modify, or reverse the order of the Collector or other officer as aforesaid.

If the Board or other authority as aforesaid confirm the order of the Collector or other officer as aforesaid, or modify such order in such

Certification to Court.

Interpretation-clause.

3. In this Act—

“treasure” means anything of any value hidden in the soil, or
 “Treasure.” in anything affixed thereto :

“Collector” means (1) any Revenue-officer in independent
 charge of a district, and (2) any officer
 “Collector.” appointed by the Local Government to
 perform the functions of a Collector under this Act.*

When any person is entitled, under any reservation in an
 instrument of transfer of any land or
 Owner. thing affixed thereto, to treasure in such
 land or thing, he shall, for the purposes of this Act, be deemed to
 be the owner of such land or thing.

Procedure on finding Treasure.

4. Whenever any treasure, exceeding in amount or value ten
 rupees, is found, the finder shall, as
 Notice by finder of trea- soon as practicable, give to the Collec-
 sure. tor notice in writing—

(a) of the nature and amount or approximate value of such
 treasure ;

(b) of the place in which it was found ;

(c) of the date of the finding ;

and either deposit the treasure in the nearest Government
 Treasury, or give the Collector such security as the Collector thinks
 fit to produce the treasure at such time and place as he may, from
 time to time, require.

5. On receiving a notice under section 4, the Collector shall,
 after making such enquiry (if any) as he
 Notification requiring claim- thinks fit, take the following steps
 ants to appear. (namely) :—

(a) He shall publish a notification in such manner as the
 Local Government from time to time prescribes in this behalf to
 the effect that, on a certain date (*mentioning it*), certain treasure
 (*mentioning its nature, amount, and approximate value*) was found in

* In Bombay, Mamlatdars have been appointed to perform the
 functions of Collectors under the Act.—See Bombay List of Local Rules
 and Orders, Vol. I., Ed. 1896, p. 163.

8. Whenever any Court is constituted under this Act, notice thereof shall be given by a written proclamation, copies of which shall be affixed in the several Courts, and in the offices of the several Collectors and Magistrates of the district;

and, from the date of the issue of such proclamation, no other Claims not cognizable in Court shall be competent to entertain other Courts. any claim or objection belonging to the class of claims or objections for the trial and determination of which such Court is constituted.

9. The Courts constituted under this Act shall be held at Special Courts where such place or places within the limits of their respective jurisdictions as shall be considered most convenient.

10. In every suit instituted under section 5 of this Act, the Plaintiff and defendant in claimant of the waste land or objector suit under section 5 to the sale or other disposition of such land shall appear as plaintiff, and the Collector or other officer aforesaid shall appear as defendant on the part of Government.

Appearance. Either party may appear by pleader or by agent :

Provided that, if such other officer as aforesaid be the presiding officer of the principal Civil Court of original jurisdiction in the district, the Local Government shall appoint some other officer to appear as defendant in the case on its behalf.

In any suit ordered to be instituted by the Local Government Plaintiff and defendant in under section 6 of this Act, the Government, by any officer to be appointed for the purpose, shall appear as plaintiff; and the claimant or objector as aforesaid shall appear as defendant.

11. In suits instituted under this Act, except as hereinafter provided, the proceedings shall be regulated, so far as they can be, by the Code of Civil Procedure.*

12. The Court shall fix a day for the appearance of the parties, and for the hearing of the suit, of which due notice shall be given to

if such suit is instituted within such period, and the plaintiff's claim is finally rejected,

the Collector may declare the treasure to be ownerless.

Any person aggrieved by a declaration made under this section may appeal against the same, within two months from the date thereof, to the Chief Controlling Revenue Authority.

Subject to such appeal, every such declaration shall be final and conclusive.

10. When a declaration has been made in respect of any treasure under section 9, such treasure shall, in accordance with the provisions hereinafter contained, either be delivered to the finder thereof, or be divided between him and the owner of the place in which it has been found in manner hereinafter provided.

11. When a declaration has been made in respect of any treasure as aforesaid, and no person other than the finder of such treasure has appeared as required by the notification published under section 5, and claimed a share of the treasure as owner of the place in which it has been found, the Collector shall deliver such treasure to the finder thereof.

12. When a declaration has been made as aforesaid in respect of any treasure, and only one person other than the finder of such treasure has so appeared and claimed, and the claim of such person is not disputed by the finder, the Collector shall proceed to divide the treasure between the finder and the person so claiming according to the following rule (namely).—

If the finder and the person so claiming have not entered into any agreement then in force as to the disposal of the treasure, three-fourths of the treasure shall be allotted to such finder, and the residue to such person. If such finder and such person have entered into any such agreement, the treasure shall be disposed of in accordance therewith :

Provided that the Collector may in any case, if he thinks fit, instead of dividing any treasure as directed by this section,—

suit under this Act, any question shall arise involving any principle of general importance, or the rights of a class.

16. The Court may proceed in the case notwithstanding a Court may proceed notwithstanding reference to the High Court, or other highest Civil Court of appeal as aforesaid, and may pass an order contingent upon the opinion of the High Court or other Court as aforesaid on the point referred ;

but no final order for the sale or other disposition of the land but not make final order. in question in the suit, or for the admission or rejection of any claim or objection which shall be before the Court in such suit, shall be passed until the receipt of the order of the said High Court or highest Civil Court of appeal.

17. The record of cases disposed of by Courts constituted Records of cases where to under this Act shall be deposited amongst be deposited. the records of the principal Civil Court of original jurisdiction in the district in which the property in dispute is situate.

18. No claim to any land, or to compensation or damages in Limitation as to claims to respect of any land, sold or otherwise land sold or dealt with dealt with on account of Government as waste land, shall be received after the expiration of three years from the date on which such land shall have been delivered by the Government to the purchaser, or otherwise dealt with.

If, within three years after any lands have been delivered by Provision for such claims the Government to the purchaser, or if preferred within the time otherwise dealt with, any claimant or objector shall prefer a claim to the land so delivered or otherwise dealt with, or an objection to such sale, or to compensation or damages in respect thereof, in the Court constituted under this Act for the district in which the land is situate, and shall show good and sufficient reason for not having preferred his claim or objection to the Collector or other officer as aforesaid within the period limited under section 1 of this Act, such Court shall file the claim or objection, making the claimant or objector plaintiff, and the Collector of the district or other officer as aforesaid (with the like provision as aforesaid if such other officer be the presiding officer of the principal Civil Court of original jurisdiction in the district) the defendant in the suit ;

and the foregoing provisions of this Act shall be applicable

trial and determination of the rights

If no such suit is instituted as aforesaid, or if the claims of the plaintiffs in all such suits are finally rejected, the Collector shall deliver the treasure to the finder.

16. The Collector may, at any time after making a declaration under section 9, and before delivering or dividing the treasure as hereinbefore provided, declare, by writing under his hand, his intention to acquire, on behalf of the Government, the treasure or any specified portion thereof by payment, to the person entitled thereto, of a sum equal to the value of the materials of such treasure or portion, together with one-fifth of such value, and may place such sum in deposit in his treasury to the credit of such persons; and thereupon such treasure or portion shall be deemed to be the property of Government, and the money so deposited shall be dealt with, as far as may be, as if it were such treasure or portion.

17. No decision passed or act done by the Collector under this Act shall be called in question by any Civil Court, and no suit or other proceedings shall lie against him for acts done *bonâ fide*.
Decision of Collector final, and no suit to lie against him for acts done *bonâ fide*.
anything done in good faith in exercise of the powers hereby conferred.

18. A Collector making any enquiry under this Act may exercise any power conferred by the Code of Civil Procedure* on a Civil Court for the trial of suits.
Collector to exercise powers of Civil Court.

19. The Local Government may, from time to time, make rules,† consistent with this Act, to regulate proceedings hereunder.
Power to make rules.

* Act V. of 1908

† For rules made under the powers conferred by this section in—
Bombay—see Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, p. 163,
Burma—see Burma Laws List, Ed. 1897, p. 80,
Madras—see Madras List of Local Rules and Orders Vol. I., Ed. 1898, p. 111;
North-Western Provinces and Oudh—see North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p. 55;
Central Provinces—see Central Provinces List of Local Rules and Orders, Ed. 1896, p. 23;
Assam—see Assam List of Local Rules and Orders, Ed. 1893, p. 107.

or transferable by deed alone, or by deed accompanied by other formalities, and any share* or interest therein. It shall also include shares in ships registered under the Merchant Shipping Act, 1854,† or at any port in British India;

"hold" and "holding" shall be applicable to any vested estate, whether for life, or of a greater or less description, in possession, futurity, or expectancy, in any immoveable property;

"contingent right," as applied to immoveable property, shall mean a contingent or executory interest, or possibility coupled with an interest, whether the object of the gift or limitation of such interest or possibility be or be not ascertained; also a right of entry, whether immediate or future, and whether vested or contingent;

"convey" and "conveyance," applied to any person, shall mean the execution by such person of every necessary or suitable assurance for conveying or disposing to another immoveable property which such person holds, or in which he is entitled to a contingent right, either for the whole estate of the person conveying or disposing, or for any less estate, together with the performance of all formalities required by law to the validity of such conveyance, including the acts to be performed by married women and tenants in-tail in accordance with the provisions of Act XXXI. of 1854 (*to simplify the modes of conveying land in cases to which the English Law is applicable*);

"transfer" shall mean the execution and performance of every deed and act by which a person entitled to stock or Government securities can transfer such stock or Government securities from himself to another;

"High Court" shall mean every Court now or hereafter established under the Statute 24 & 25 Vict., cap. 104,‡ and also the Chief Court

* *Re Angelo*, 5 DeG. & S 278.

† Stat. 17 & 18 Vict., c. 104.

‡ "The Indian High Courts Act, 1861." Compare the definition Compare also the definition of "High Court" in the General Clauses Act (X. of 1897), s 3 (24), and also in s 4 (j) of Act V. of 1898 (the new Code of Criminal Procedure).

and "devisee" shall mean any person taking immoveable property under a bequest, and any person, other than an executor or administrator, claiming an interest in immoveable property, not as entitled thereto under the said rules, but by a title dependent solely upon the operation of the laws concerning intestate and testamentary succession;

"mortgage" shall be applicable to every estate or interest in immoveable or moveable property which would in the High Court be deemed merely a security for money;

"person" shall include any company or association, or body of persons, whether incorporated or not:

Words importing the singular number only shall extend to several persons or things; words importing the plural number shall apply to one person or thing; words importing the masculine gender shall extend to a female.

3. The powers and authorities given by this Act to the High Court to have jurisdiction in what cases. High Courts shall and may be exercised only in cases to which English law is applicable, and may be exercised with respect to property within the local limits of the extraordinary original civil jurisdiction of the said Courts respectively.

4. When any lunatic or person of unsound mind shall hold any immoveable property upon any trust or by way of mortgage, it shall be lawful for the High Court to make an order that such property be vested in such person or persons, in such manner, and for such estate as the said Court shall direct; and the order shall have the same effect as if the trustee or mortgagee had been sane, and had duly executed a conveyance of the property in the same manner for the same estate.

5. When any lunatic or person of unsound mind shall be entitled to any contingent right in any immoveable property upon any trust or by way of mortgage, it shall be lawful for the High Court to make an order wholly releasing such property from such contingent right, or disposing of the same to such person or persons as the said High Court shall direct: and the order shall have the same effect as if the said person or persons had been sane, and had duly executed a conveyance of the property in the same manner for the same estate.

effect as if the minor trustee or mortgagee had attained his majority, and had duly executed a conveyance of the property in the same manner for the same estate.

9. Where any minor shall be entitled to any contingent right in any immovable property upon any trust or by way of mortgage, it shall be lawful for the High Court to make an order wholly releasing such property from such contingent right, or disposing of the same to such person or persons as the said Court shall direct; and the order shall have the same effect as if the minor had attained his majority, and had duly executed a deed so releasing or disposing of the contingent right.

10. When any person solely holding any immovable property upon any trust shall be out of the jurisdiction of the High Court, or cannot be found, it shall be lawful for the said Court to make an order vesting such property in such person or persons, in such manner, and for such estate, as the said Court shall direct; and the order shall have the same effect as if the trustee had duly executed a conveyance of the property in the same manner and for the same estate.

11. When any person or persons shall hold any immovable property in trust jointly with a person not within the jurisdiction of the High Court, or who cannot be found, it shall be lawful for the said Court to make an order vesting the property in the person or persons so jointly holding, or in such last-mentioned person or persons, together with any other person or persons, in such manner, and for such estate, as the said Court shall direct; and the order shall have the same effect as if the trustee out of the jurisdiction, or who cannot be found, had duly executed a conveyance of the property in the same manner for the same estate.

12. When any person solely entitled to a contingent right in any immovable property upon any trust shall be out of the jurisdiction of the High Court, or cannot be found, it shall be lawful for the said Court to make an order wholly releasing such property from such contingent right, or disposing of the same to such person or persons as the said Court shall direct; and order shall have the same effect

have the same effect as if the heir or devisee of such trustee had duly executed a conveyance of the property in the same manner for the same estate.

17. When any immoveable property is subject to a contingent right of unborn person or class of unborn persons, who, upon coming into existence, would, in respect thereof, hold such property upon any trust, it shall be lawful for the High Court to make an order which shall wholly release and discharge such property from such contingent right in such unborn person or class of unborn persons, or to make an order which shall vest in any person or persons the estate or estates which such unborn person or class of unborn persons would, upon coming into existence, hold in such property.

18. In every case where any person holds or shall hold, jointly or solely, any immoveable property, or is or shall be entitled to a contingent right therein, upon any trust, and a demand shall have been made upon such trustee by a person entitled to require a conveyance of such property, or a duly-authorized agent of such last-mentioned person requiring such trustee to convey the same, or to release such contingent right, it shall be lawful for the High Court, if the said Court shall be satisfied that such trustee has wilfully refused or neglected to convey the said property for the space of twenty-eight days after such demand, to make an order vesting such property in such person or persons, in such manner, and for such estate as the Court shall direct, or releasing such contingent right in such manner as the Court shall direct; and the said order shall have the same effect as if the trustee had duly executed a conveyance of the property, or a release of such right, in the same manner and for the same estate.

19. When any person to whom any immoveable property has been conveyed by way of mortgage shall have died without having entered into the possession, or into the receipt of the rents and profits, thereof, and the money due in respect of such mortgage shall have been paid to a person entitled to receive the same, or such last-mentioned person shall consent to an order for the re-conveyance or vesting of such property, then, in any of the following cases, it shall be lawful for the High Court to make an order vesting